

United States
Circuit Court of Appeals

For the Ninth Circuit.

UNITED STATES OF AMERICA,
Appellant,

vs.

THEODORE THOMPSON,
Appellee.

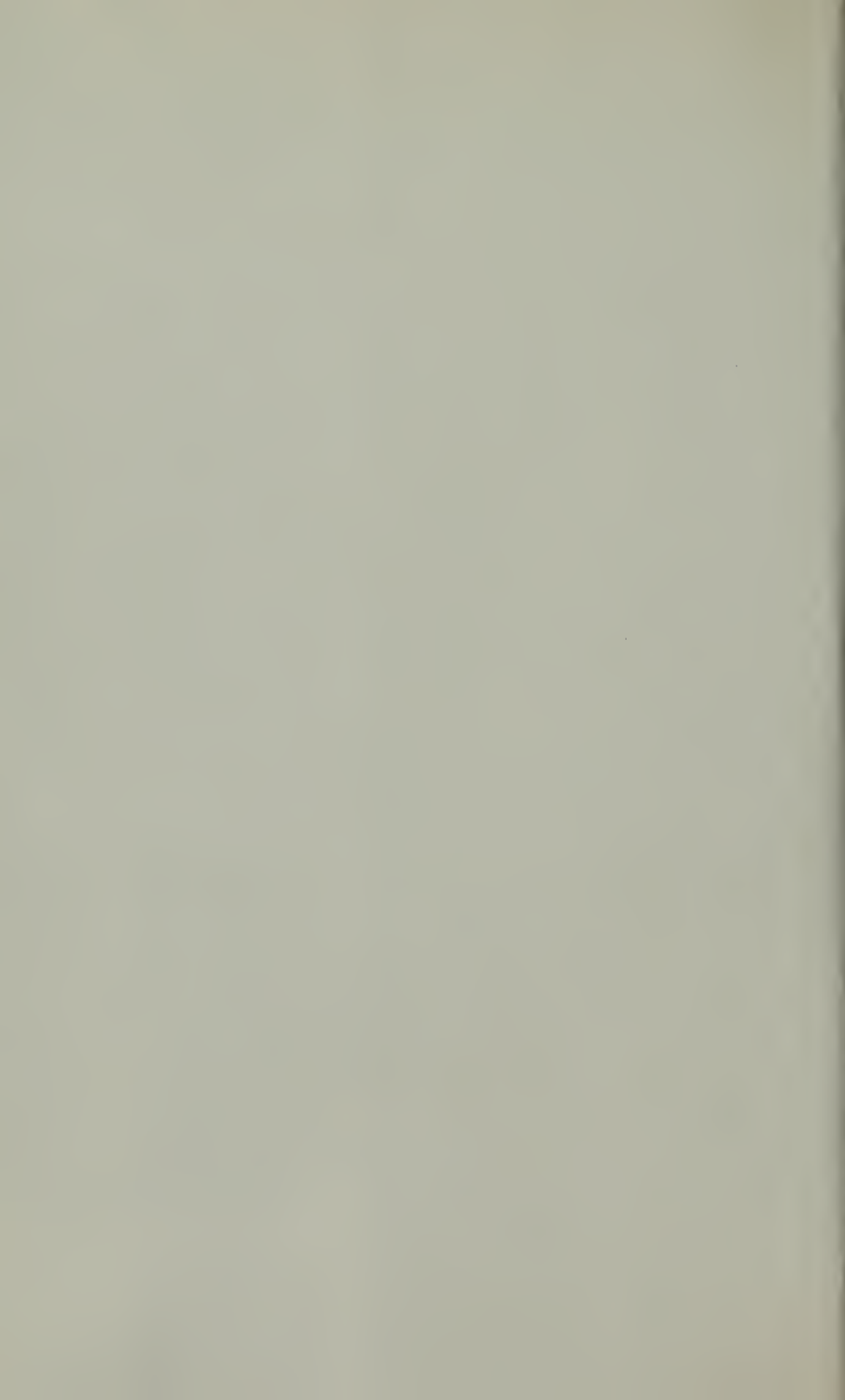
Transcript of Record

Upon Appeal from the District Court of the United States
for the District of Montana.

FILED

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PAUL P. O'BRIEN,
CLERK



No. 8373

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD.

Messrs. MOLUMBY, BUSH & GREENAN,
of Great Falls, Montana,
Attorneys for Plaintiff and Appellee.

Mr. JOHN B. TANSIL,
United States Attorney,

Mr. R. LEWIS BROWN,
Assistant United States Attorney, and

Mr. FRANCIS J. McGAN,
Attorney, Department of Justice,
all of Butte, Montana,
Attorneys for Defendant and Appellant. [1*]

*Page numbering appearing at the foot of page of original certified Transcript of Record.

In the District Court of the United States in and
for the District of Montana.

No. 669.

THEODORE THOMPSON,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

BE IT REMEMBERED that on July 2, 1931, a
Complaint was duly filed herein, which is in the
words and figures following, to-wit: [2]

COMPLAINT.

Plaintiff complains of the defendant and alleges:

I.

That at all the times herein mentioned the plain-
tiff was and still is a citizen of the United States
and a resident of the State of Montana.

II.

That on or about the 18th day of September,
1917, the plaintiff enlisted in the armed forces of
the United States; that he served the defendant
in the United States Army from said date down
to and including the 13th day of August, 1919,
when he was discharged from said Army, and that
during all of the said time he was employed in the

active service of the defendant during the war with Germany and its allies.

III.

That between said dates the plaintiff made application for insurance under the provision of Article Four of the War Risk Insurance Act of Congress and the rules and regulations of the War Risk Insurance Bureau established by said Act, in the sum of Ten Thousand Dollars (\$10,000.00) and that thereafter there was duly issued to the plaintiff by said War Risk Insurance Bureau, a certificate of his compliance with the War Risk Insurance Act, so as to entitle him, and his beneficiaries, to the benefits of said Act, and the other Acts of Congress relating thereto, and the rules and regulations promulgated by the War Risk Insurance Bureau, the [3] Veterans' Bureau, and the Directors thereof, and that during the term of his service with the said War Department, in said Army as aforementioned, there was deducted from his pay for said services by the United States government, through its proper officers, the monthly insurance premiums provided for by said Act and the rules and regulations promulgated by the War Risk Insurance Bureau, the Veterans' Bureau, and the Directors thereof.

IV.

That during the period of his service in said war with Germany and its allies as above mentioned

and while said insurance was in full force and effect the plaintiff contracted certain diseases and disabilities and suffered certain injuries, which said diseases, injuries and disabilities have continuously, since the date of his discharge from the defendant's army, rendered and still do render the plaintiff wholly unable to follow any substantially gainful occupation, and such diseases and disabilities and injuries are of such a nature and founded upon such conditions that it is reasonable to suppose and believe that it will continue throughout the life time of the plaintiff to so render the plaintiff unable to follow any substantially gainful occupation, and that the plaintiff has been ever since his discharge from the defendant's army and still is totally and permanently disabled by reason of and as a direct and proximate result of such diseases, injuries and disabilities received and contracted while his War Risk Insurance was in full force and effect.

V.

That the plaintiff in writing on Dec. 18, 1919 made application to the United States Government, through the Veterans Bureau, and the Director thereof, and the Bureau of War Risk Insurance, and the Director thereof, for the payment of said insurance, and for [4] the monthly payment due under the provisions of said War Risk Insurance Act, for total permanent disability, and that the said Veterans Bureau, and the said Bureau of War Risk Insurance, and the Directors thereof,

have refused to pay the plaintiff the amount provided for by the War Risk Insurance Act, and have disputed the claim of the plaintiff to the benefits of said War Risk Certificate, issued under the Act, and by written letter dated January 15, 1920 refused to grant him said benefits and have disagreed with him concerning his rights to the insurance benefits of said Act.

VI.

That under the provisions of the War Risk Insurance Act and the other acts of Congress relating thereto the plaintiff is entitled to the payment of FIFTY-SEVEN AND 50/100ths DOLLARS (\$57.50) for each and every month transpiring from and after the date of his discharge from the defendant's army and all such monthly installments accruing since the date of his discharge are now due and owing from the defendant to the plaintiff.

VII.

Plaintiff has employed the services of Molumby, Busha & Greenan, Lawyers, duly licensed to practice their profession in the state of Montana to prosecute this action to a conclusion, and that under the provisions of the War Risk Insurance Act the court as a part of this judgment or decree may allow as a reasonable attorneys' fee the sum of ten per cent (10%) of the amount recovered under the contract of insurance and to be paid by the bureau out of the payment to be made under the judgment and in accordance with the law at a rate not to exceed one-tenth (1/10) of each of such

payments until paid and that ten per cent (10%) is a reasonable attorneys' fee in the premises. [5]

WHEREFORE, plaintiff prays judgment as follows:

1. For the sum of FIFTY-SEVEN AND 50/100ths (\$57.50) DOLLARS per month for each and every month elapsing from and after the 13th day of August, 1919 until the date of judgment herein.

2. That the Court as a part of its judgment or decree direct that ten per cent (10%) of the amount recovered under the contract of insurance and to be paid by the bureau out of the payments to be made under the judgment and in accordance with the law and at a rate not to exceed one-tenth (1/10) of each of such payments be paid to the attorneys for the plaintiff as a reasonable attorneys' fee.

3. For such other and further relief as to the court may seem just.

MOLUMBY, BUSH & GREENAN,
Attorneys for Plaintiff. [6]

State of Montana

County of Cascade—ss:

LOY J. MOLUMBY, being first duly sworn upon oath deposes and says: That he is one of the attorneys for the plaintiff in the above entitled action; that he has read the foregoing complaint and knows the contents thereof and that the same is true to the best of his knowledge, information and belief; that the reason this verification is made by the affiant is that the plaintiff does not now reside

within the County of Cascade wherein this affiant resides and makes this verification.

LOY J. MOLUMBY.

Subscribed and sworn to before me this 1st day of July, 1931.

[Seal]

P. G. GREENAN,

Notary Public for the state of Montana,
Residing at Great Falls, Montana.

My commission expires June 14, 1933.

[Endorsed]: Filed July 2, 1931. [7]

Thereafter, on April 18, 1932, Answer was duly filed herein, which is in the words and figures following, to-wit: [8]

[Title of Court and Cause.]

ANSWER

COMES NOW the Defendant and for answer to the complaint of the plaintiff herein, admits, denies and alleges:

I.

Alleges that it has no information sufficient to form a belief as to the allegations of Paragraph I of the complaint herein and therefore denies the same.

II.

Admits the allegations of Paragraph II of the complaint herein except the allegation that the plaintiff enlisted on September 18, 1917, and in this connection alleges the fact to be that the plaintiff enlisted on September 19, 1917.

III.

Admits that plaintiff on February 1, 1918 made application for insurance in the amount of Ten Thousand Dollars (\$10,000.00) under the provisions of Article IV of the War Risk Insurance Act, and admits that during the term of his service there was deducted from his pay for said service the monthly premiums provided for by said Act, and denies each and every other allegation contained in Paragraph III of the complaint herein. In this connection the defendant alleges that plaintiff failed to pay the premium due on said Ten Thousand Dollars (\$10,000.00) insurance on the 1st day of September, 1919, and that by reason thereof the said insurance [9] lapsed and was cancelled on October 1, 1919.

IV.

Denies each and every allegation, matter and thing contained in Paragraph IV of the complaint herein.

V.

Admits that the plaintiff made application to the United States Government for the payment of said insurance in a demand dated June 22, 1931, and denies each and every other allegation contained in Paragraph V of the complaint herein, and in this connection alleges that the Director of the Veterans' Bureau and the Administrator of Veterans' Affairs has not denied said claim as set forth in the complaint of the plaintiff herein and that no one acting in the name of the Director of the Veterans' Bureau or Administrator of Veterans' Affairs has rendered a denial of the claim herein sued upon, and further alleges that no disagreement as required by Section

445, Title 38 of the U. S. Code exists as to the claim herein sued upon.

VI.

Denies each and every allegation, matter and thing contained in Paragraph VI of the complaint herein.

VII.

Alleges that it has no information sufficient to form a belief as to the services of the attorneys as alleged in Paragraph VII of the complaint herein and therefore denies the same.

Except as herein specifically admitted, qualified, or denied, denies generally and specifically each and every and all the allegations of the said complaint.

Further answering and as an affirmative partial defense herein, the defendant alleges:

I.

That during the month of July, 1921, upon application of [10] the plaintiff, the defendant reinstated one-half of the plaintiff's original Ten Thousand Dollars (\$10,000.00) War Risk Term Insurance and converted the same to a United States Government Life Insurance Policy in the amount of Five Thousand Dollars (\$5,000.00); that the premiums on said converted insurance in the amount of Five Thousand Dollars (\$5,000.00) were paid to include the month of August, 1931, and that the plaintiff now has the said policy of converted insurance in his possession and control.

II.

That the plaintiff must surrender and waive all rights under said policy of converted insurance in

the amount of Five Thousand Dollars (\$5,000.00) and cannot recover on said term insurance unless and until he surrenders said policy of converted insurance to the defendant in accordance with the provisions of Section 518 of Title 38 of the U. S. Code.

For a Second Affirmative Defense alleges:

That the action is barred by the provisions of Section 445 of Title 38, U. S. C., the same not having been brought within six (6) years after the right accrued for which the claim is made.

WHEREFORE, the defendant, having fully answered the complaint herein, prays:

I.

That the case be dismissed on its merits and that the defendant have its costs.

II.

That if the plaintiff be found entitled to recover on the contract herein sued upon, to wit: that founded upon the application of the plaintiff dated February 1, 1918, he be required to surrender to the defendant for cancellation the said policy of converted insurance in the amount of Five Thousand Dollars (\$5,000.00) which he now holds.

WELLINGTON D. RANKIN

United States District Attorney,
for the District of Montana.

By D. L. EGNEW

Assistant United States
Attorney

D. D. EVANS

(Attorneys for the defendant) [11]

State of Montana,
County of Lewis and Clark—ss.

D. L. Egnew, being first duly sworn, deposes and says that he is the Assistant United States Attorney in and for the District of Montana and one of the attorneys for the defendant named in the foregoing answer, and as such is acquainted with the facts in the case; that he has read the answer and knows the contents thereof, and that the same are true to the best of his knowledge, information and belief.

D. L. EGNEW

Assistant United States Attorney

Subscribed and sworn to before me this 15th day of April, 1932, at Helena, Montana.

[Seal] MARJORIE McLEOD

Notary Public for the State of Montana, Residing at Helena, Montana. My Commission expires March 31st, 1934.

[Endorsed]: Filed April 18, 1932. [12]

Thereafter, on June 23, 1936, the cause came on for trial, and was tried on June 23, 24, and 25, 1936, the

MINUTE ENTRIES OF THE RECORD
OF TRIAL

on said dates being as follows, to wit: [13]

No. 669, Theodore Thompson vs. United States

This cause came on regularly for trial this day, Messrs. Molumby, Busha & Greenan appearing for

plaintiff, and Mr. R. Lewis Brown and Mr. Francis J. McGan appearing for the United States.

Thereupon the following named persons were duly impanelled, accepted and sworn as a jury to try the cause, viz:

R. M. Emmons, Arthur Hamilton, E. G. Timm, Clyde O. Palmer, Ben B. Hagerman, C. B. Isler, Hal M. Panton, Andrew Olson, James Noyes, C. E. Richardson, Stewart North and S. C. Hannon.

Thereupon Theodore Thompson, Dr. Richards, and Dr. Allard were sworn and examined as witnesses for plaintiff, and plaintiff's exhibits 16, 11 and 12, and defendant's exhibits 7, 8, 5, 10, 17, 18, 9, 1 and 19 were offered and admitted in evidence, in the order named, whereupon further trial of cause was continued until 10:00 A. M. tomorrow.

It was agreed by the parties and ordered by the court that plaintiff's Exhibit No. 16, (his Honorable Discharge from the army), may be later withdrawn and copy substituted.

Entered in open Court June 23, 1936. Billings, Montana.

C. R. GARLOW,
Clerk. [14]

No. 669, Theodore Thompson vs. United States.

Counsel for respective parties, with the jury, present as before and trial of cause resumed. Thereupon Theodore Thompson was recalled as a witness for plaintiff and defendant's exhibit No. 20 was

offered and admitted in evidence. Thereupon Carl Bue, O. P. Terland, O. A. Nepstad, Leo Overfelt, Adolph Myrstol, James R. Davis, R. H. Cartwright and Dr. D. Claiborn were sworn and examined as witnesses for the plaintiff, whereupon plaintiff rested.

Thereupon defendant moved the court for a directed verdict, for lack of proof, which motion was by the court denied and exception of defendant taken and noted.

Thereupon F. J. McGan, and M. E. Hawkins were sworn and examined as witnesses for defendant, Theodore Thompson and Dr. Claiborn were recalled as witnesses for defendant, and a certain affidavit of mailing, filed herein on July 30, 1931, was offered by defendant and admitted in evidence, whereupon defendant rested. Thereupon Dr. D. Claiborn and Theodore Thompson were recalled in rebuttal, whereupon plaintiff rested and the evidence closed.

Thereupon defendant renewed its motion for a directed verdict, for lack of proof, and on the further ground that this action is barred by the provisions of Section 445, Title 38, U. S. C., which motion was by the court denied and the exception of defendant duly taken and noted.

And thereupon, after the arguments of counsel and the instructions of the court, the jury retired to consider of its verdict, the defendant's exception to the refusal of the court to give a certain instruction offered, being duly taken and noted.

The Marshal was ordered by the court to furnish meals and lodging to the jurors and bailiffs.

Thereafter, at 6 P. M., the jury was instructed by the court to seal its verdict, if agreed upon, and return the same into court at 10 A. M. tomorrow.

Entered in open court June 24, 1936, at Billings, Montana.

C. R. GARLOW,
Clerk. [15]

No. 669, Theodore Thompson vs. United States.

Counsel for respective parties present as before.

Thereupon the jury returned into court with its verdict, which was duly received by the court, read and filed, and by the jury acknowledged to be its true verdict, as follows, to wit:

[Title of Court and Cause.]

“We, the jury in the above entitled cause, find for the plaintiff and against the defendant, and assess his damages in the amount of the installments of War Risk Insurance accruing from and after the 13th day of August, 1919. James Noyes, Foreman.”

Thereupon judgment was ordered entered accordingly.

Thereupon, on motion of F. J. McGan, counsel for defendant, and by agreement of counsel for the plaintiff, court ordered that defendant be and is granted ninety days in addition to the time allowed by rule in which to prepare, serve and lodge herein its proposed bill of exceptions and that the term be

and hereby is extended until said Bill of Exceptions shall be finally settled.

Entered in open court June 25, 1936, at Billings, Montana.

C. R. GARLOW,
Clerk. [16]

Thereafter, on June 25, 1936, the Verdict of the Jury was duly filed herein which is in the words and figures following, to wit: [17]

[Title of Court and Cause.]

VERDICT.

WE, THE JURY, in the above entitled cause, find for the plaintiff, and against the defendant, and assess his damages in the amount of the installments of War Risk Insurance accruing from and after the 13th day of August, 1919.

JAMES NOYES,
Foreman.

[Endorsed]: Filed June 25, 1936. [18]

Thereafter, on July 18, 1936, Judgment was duly filed and entered herein in the words and figures following, to wit: [19]

In the District Court of the United States in and for the District of Montana, Billings Division.

No. 669.

THEODORE THOMPSON,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

JUDGMENT.

This cause came on regularly to be tried on the 23rd day of June, 1936, Molumby, Busha & Greenan, appearing as counsel for the plaintiff, and R. Lewis Brown, Assistant United States Attorney for the District of Montana, and Francis J. McGan, Attorney, Department of Justice, appearing as counsel for the defendant. A Jury of twelve persons were regularly empaneled and sworn to try said cause; witnesses on the part of the plaintiff and the defendant were sworn and examined; after hearing the evidence, arguments of counsel and the instructions of the Court, the jury retired to consider of their verdict, and returned into Court their verdict in words and figures as follows:

“We, the Jury, in the above entitled cause, find for the plaintiff and against the defendant.

and assess his damages in the amount of installments of War Risk Insurance accruing from and after the 13th day of August, 1919.

James Noyes, Foreman."

and the court being advised in the premises, it hereby specifically finds that the plaintiff has employed Molumby, Busha & Greenan, duly licensed and practicing attorneys, licensed to practice their profession before this Court, the Courts of the State of Montana, and before the United States Supreme Court, to prosecute this action, and finds as a reasonable attorney fee ten per cent (10%) of the amount recovered under the contract of insurance to be paid [20] by the United States Veterans' Bureau out of the payments to be made under the judgment and in accordance with law, at a rate not to exceed one-tenth of each of such payments until paid.

WHEREFORE, by virtue of the law, and by reason of the premises, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that the plaintiff do have and recover of and from the defendant, the United States of America, Fifty-seven and 50/100 Dollars (\$57.50) for each and every month elapsing from and after the 13th day of August, 1919, and on or prior to which date the Jury found the plaintiff to be permanently and totally disabled, and up to and including the date hereof, and for the further sum of Fifty-seven and 50/100 Dollars (\$57.50) per month from and after

the date hereof, so long as the plaintiff shall remain permanently and totally disabled, and the Court as a part of its judgment determines and allows, as a reasonable attorney fee for the attorneys for the plaintiff, ten per cent (10%) of the amount recovered under the contract of insurance and to be paid by the United States Veterans' Bureau out of the payments to be made under the judgment and in accordance with law at a rate not to exceed one-tenth of each of such payments until paid.

Dated: July 18th, 1936.

CHARLES N. PRAY,
Judge.

[Endorsed]: Filed July 18th, 1936. [21]

Thereafter, on September 25, 1936, Bill of Exceptions was duly signed, settled, allowed and filed herein, being in the words and figures following, to-wit: [22]

[Title of Court and Cause.]

DEFENDANT'S PROPOSED BILL OF
EXCEPTIONS.

BE IT REMEMBERED That the above entitled cause came on regularly for trial on the 23rd day of June, 1936, being one of the days of the....., term of said Court, before Honorable Charles N. Pray, a Judge of the said Court, and a jury duly empaneled. Messrs. Molumby, Busha & Greenan,

appeared as counsel for the plaintiff; and R. Lewis Brown, Esq., Assistant United States Attorney for Montana, and Francis J. McGan, Attorney for the Department of Justice, appeared as counsel for the Government. And upon the issues joined, the following proceedings were had:

THEODORE THOMPSON,

The plaintiff, being called as a witness in his own behalf, and being duly sworn, upon

Direct Examination

by Mr. Molumby, testified as follows:

I am Theodore Thompson, the plaintiff in this case. I live down near Reed Point, Montana. I have lived down in that country ever since 1912. That is when I came over from the old country. I was born in Norway and was 19 years old when I came to this country. I came here in 1912. [26] After I came out to this country around Reed Point I was working mostly around stock. I worked some on some of the sheep ranches down in there. Prior to coming to this country I had a seventh-grade schooling. I had that schooling in Norway. When I came to this country I could not talk English. What English I learned I acquired by contact with American people. I have not gone to school in this country for any length of time. At the time I went into the army I could not talk

(Testimony of Theodore Thompson.)

English as well as I can now. I was not at that time able to read and write English. Since that time I have not acquired some knowledge so that I am able to read the English language myself, except the common words. Some of the high words I can't read or understand at all. The only way I can write in English is my own name. I can not write the words out if I take considerable time and learn how to spell the words. I would not be able to carry on any correspondence in the English language.

I went into the United States Army during the World War. At the time I went in I was working at Reed Point for O. A. Nepstad and Carl Bue. At that time I was tending camp in the mountains. At that time I was getting a salary of about \$80.00 a month. I worked for those two men practically all of the time since I came to the country. During the time that I was working for them I did other work than tending camp. I worked on ranch for them, in the haying and I worked for them in the threshing and I also herded sheep. I worked steadily for them all the time, and did all the work commonly done upon a sheep ranch. [27]

I served in Company D, 347th Machine Gun Battalion, 91st Division, in the Army. After I enlisted I first went to Camp Lewis, Washington. While at Camp Lewis I got hurt in the right knee, at a time when we were out on a night maneuver and it was dark and raining and as we were marching through the woods I fell into a hole of some

(Testimony of Theodore Thompson.)

kind. As near as I could describe it, it was a rotten stump that had rotted out, and I twisted my knee. I fell on my body, and the weight of my body jerked it back; and now when I walk it kind of hurts me and jerks back. After I stepped in this hole, it affected me for some time thereafter. I was limping and it was hurting me quite a bit. I was laid off duty, just in the barracks, you know. I told the Captain about it, and he said "You just better stay around the barracks a few days and maybe it will get better." After that it improved to a certain considerable extent. At that time I had my left leg, and I throwed my weight on my left leg and I could kind of protect my right leg. That right leg has bothered me continuously from that time on. It affects me when I am walking. If I don't watch how I fix my foot or place my foot, it kind of hurts and grinds back in my knee. To overcome that situation, I kind of take hold of it and kind of hold it in place, like. That happens when I am walking around and I step sideways or something, and then there is just a kind of catch in there. That has been true ever since I was hurt out there at Camp Lewis. It is getting worse as time goes on. The cause of that is that I have got to put all my weight on my right leg. I am a one-legged man now, and have been since [28] I was in the army.

While I was at Camp Lewis I contracted measles. I could not recall really when that was, but it was either in February or March, 1918. I was hospital-

(Testimony of Theodore Thompson.)

ized for the measles, and while hospitalized I got the mumps. I remained there and was treated both for the measles and mumps at the hospital. I was a month or six weeks at the hospital. When I got out of the hospital I was weak and nervous and had lost weight and was not able to go back to duty as soon as I got out of the hospital. I had orders from the hospital to report back to the barracks and then I was put in quarters in the barracks, ordered to stay in the barracks without hard duty. I was marked quarters. By "marked quarters" they meant when a man went back to his barracks to his company he had orders from the doctor to the Captain to keep that man off of hard duty. I had no duties at all to perform when I was in quarters. I was compelled to stay in the barracks all the time. I was marked quarters for a period of about two weeks. Thereafter, I went back to duty as a soldier. About three months, I should judge, after I went back to duty as a soldier I went back east to go over seas. I embarked in June from New York to go over seas, and went over with the 91st Division. I arrived in Europe at London, and after debarking in London remained in England, as near as I can recollect, about a month. We were not training in England at all. I arrived in France at Brest. After arriving in France we then went into training up in the country some place. I have forgotten the name of the [29] town. I was in training two or three months before being shipped up to the front. We were first shipped to the St. Mihiel section of the

(Testimony of Theodore Thompson.)

front. I was in the St. Mihiel front about six or seven days, and was engaged in actual battle at St. Mihiel during those six or seven days. After I was at the St. Mihiel front, I was sent to the Argonne. Prior to going up to the Argonne we did not go back in a rest camp. Between the time we came out of St. Mihiel and went up to the Argonne we kept hiking and on the train, and were moved from one front to another. We marched for a couple of days, I guess, and then we entrained and went right up to the Meuse-Argonne. When we got up to the Meuse-Argonne we did not engage in battle right away. We were back of the line there in the woods, laying under cover for three or four days until we got prepared to make a drive. We were under fire during that time and were in an area where there was shelter. From those woods we were sent into the front line trenches. I remained up there in the Meuse-Argonne front line the first time sixteen days, and came out at the end of those sixteen days. At that time we were heading for a rest camp and something happened up in the front and we did not get back to the rest camp. I do not know what happened up at the front, but we were ordered right back again and I went back and was up there at this time about ten days. I was in actual battle all of that time, after I had been previously sixteen days under shell fire up there all that time. At the end of the ten days in the Meuse-Argonne we went back to the rest camp. I could not [30] possibly say how far back that was, but we went

(Testimony of Theodore Thompson.)

back quite a ways and camped and laid around in the brush. I was in the rest camp about two weeks. From there I was sent to Flanders Field, Belgium. We got there by hiking part of the way and a part of the way we went on the train. When I arrived in Belgium I went up to the Flanders front. I was up there about three days. At the end of the three days is when I was wounded.

Going back to the time that I went up to the St. Mihiel front, I had experiences which affected my health, and also in the Meuse-Argonne. I got an awful stomach trouble, and cramps in my stomach, from the food I was getting and also from the water I was drinking. Up there at the front I had canned meat, in cans, commonly called corn willie. That was the only food that I had. Our food kitchens were not able to get up to the front while we were up there. The water I had to drink was out of the shell holes. That was the only water that I had to drink there. That area in the Meuse-Argonne was under gas at that time. The gas that was sent over by the Germans there was sent over by shells, and the shells struck the ground and they bursted and the gas was laying like a cloud under the ground. Gas always sinks down in the ground, the lowest places it can sink, and of course it got into the water. It was cloud gas and mustard gas. After the shell explodes, this gas sinks. I do not know if I could taste it in the water, but the water had an awful bad taste. This water that came from the shell holes came from rain.

(Testimony of Theodore Thompson.)

When a battle was on, it rained every day. [31] It was all over the ground and it ran around over the dead men and dead horses and down in the shell holes. This water and eating that corned willie gave me cramps all over my stomach and diarrhea and passing blood. This diarrhea was very severe. I could not take care of myself. It has lasted ever since. It affected me with nausea and I had vomiting spells.

During that time and in that area that was being gassed, I encountered gas myself, and got gassed. It happened the second time in the Argonne, the last ten days we were in there. When we first went in, we got a bunch of new men that just came over from the States, and they went in with us to the line. And the first night, I believe it was, I was put on as a detail to take 19 of those men up to the front and move some ammunition from one dugout over a hill and into another dugout, and during that time the enemy commenced throwing gas shells at us and several of the boys were not used to gas masks and they got excited, and two of them couldn't get their masks on, and I ran up and tried to help them get their masks on; but before I could get my mask on I got some gas, and that is how I got gassed. The effect of the gas on me was that it choked me. It was either mustard gas or this cloud gas. The inhaling of this gas affected me by choking my throat and I could not get my breath. And it affected my stomach. I was

(Testimony of Theodore Thompson.)

vomiting. For about a day or two I was vomiting every once in a while. After I inhaled this gas, after those two or three days were over, it affected my ability to breathe. I am being short-winded [32] ever since. This stomach trouble that I mentioned, coming from the poisoned water and food, has remained with me. I still have that stomach trouble yet. Since I got out of the army I get spells so I can't hardly eat anything, just vomiting. Just drinking common water, that even won't stay down in my stomach. I just vomit it up again. Those spells will go for one month or two or three months, and all at once it will come on me and stay for a month or so. The last spell of that kind I had was in April of this year. At that time I was called to Helena, at the Veterans Bureau at Fort Harrison.

Going back to the time I was up in Flanders Field there, I stated I was there three days. I remember the day I went into the front lines in Flanders Field. It was October 30th. I came out October 31. The morning of the 31st of October we were advancing across a railroad track and at about noon we were halted. We had orders to halt and we laid around there under cover for a while. I couldn't say just the length of time, but the first thing we knew we were ordered back over this railroad track again; and as we came back over there was an old house and kind of barn like, and we were laying around there under cover. And as I was sitting there on two ammunition machine

(Testimony of Theodore Thompson.)

gun boxes, which I was carrying, I could hear an airplane, and I kind of looked up under my helmet and I could see that airplane make a loop, which they used for a signal, you see, to the artillery to throw the shells over, and I told the men that I was in charge of we had better move a little. But before [33] we could do that the shell came over and bursted and struck me in my left knee, and I fell on my back. And as I kind of came to again and looked around, one of the boys was dead and another one lost his right arm and it was kind of throwed over his left shoulder. I looked down on myself, and I could see the bone sticking out of my left knee, and the blood was just all pouring out of it, and then I passed out. I don't know what took place. When I came to, I was inside of this barn. At the time I was hit, and before I was hit, there was nothing in the barn, as I remember. When I came to they were using the barn for a dressing station for the wounded. The Medical Corps was up there using that when I came to. There were other wounded men laying around the barn, being taken care of. At the time I was hit, I could not say if there were any of the Medical Corps up there at all. I did not see any at the present time. I judge I was hit about two o'clock in the afternoon, and it was about eight or nine o'clock at night when they moved me out of that first aid dressing station. They moved me by ambulance. I remember the trip by ambulance from there. They

(Testimony of Theodore Thompson.)

took me to a field hospital. That was not an American field hospital. It was an English field hospital. I have no idea how far back of the lines it was; I could not say. I could not say how long I rode in the ambulance getting back there. I was both conscious and unconscious during the trip. I was conscious part of the time, and unconscious part of the time. When I got back to the field hospital, the first thing they did when I arrived there was to give me a shot in the arm, and [34] then they took me into an operation room and cut my leg off. At that time they cut my leg off just above the knee. It was the left leg. I remained in that field hospital five or six days. Then they loaded me on a hospital train and took me down to France.

During the time I was in the field hospital and the first aid dressing station, my stomach was in bad condition. I was vomiting and had cramps in my stomach. They gave me no treatment that I know of for that. I could not say what percentage of the time that I was in the field hospital and dressing station I was unconscious. I would come to myself and then pass out again, and come to myself and pass out again; I could not say. My recollection of the things that transpired there, now as I look back on it, is just like a dream.

When I left the field hospital, I was taken to a base hospital at Boulogne, France. I was in the base hospital for quite a while, two or three months. While I was in the base hospital they were treat-

(Testimony of Theodore Thompson.)

ing my leg wound and dressing it. At that time I got gangrene in my leg. They treated this gangrene. They put me under ether, or gas, whatever it was, and operated some more on it. I do not what they did when they operated. I could not say what they did, but I know they operated on me. They did that more than once while I was in the base hospital; they operated more than once, but I could not say how many times.

After I left the base hospital, I was sent to England, to a point outside of London. I was at the hospital [35] there. That was a kind of rest hospital; what they call a convalescent hospital. While I was there I received treatment. There was pus or something formed in my leg around the bone on the flesh. I don't know what treatment they gave me for that. They just put me under ether and the doctors took care of it. Whatever they did, I don't know. They put drains in the stump. The drains were there after the operation. It seemed to me that I remained at this convalescent hospital near London around three weeks. From there I was shipped back to this country. I came back to this country on a hospital boat. While on the hospital boat I did not receive any treatment. I was not able to walk at that time. I was still a bed patient when I was on the hospital boat. I arrived at New York City when I came to this country.

During this period, when I was at the convalescent hospital and on the hospital boat, my stomach

(Testimony of Theodore Thompson.)

was cramping and I was vomiting. The doctors did not give me any treatment for that that I know of. I was not taking any medicine all during this time. During this period of hospitalization I was still bothered with the dysentery, and that was true all the time when I got back to this country. I arrived in this country at New York and was taken to the Green Hut Hospital, which is right near New York. I remained in the Green Hut Hospital about a week's time and from there went to Fort Des Moines, Iowa. I was at Fort Des Moines, Iowa, until I was discharged, a period of about five or six months. I was in the hospital during all of that time. [36]

I think the first time I got out of bed was in New York City, at the Green Hut. I was not able to get around then. When I got up out of bed they gave me a pair of crutches. The doctor came in there one morning and asked me if I believed I could get out of bed. "I will try it," I said. He said, "I will give you some crutches," so he brought the orderly in with some crutches. And so I got up and tried to get out of bed, but I had been in bed so long I was dizzy and couldn't stand it, and I just fell back into bed again. After that, while I was in the Green Hut, I got up and used crutches. While I was there the orderlies helped me a few times to get up and back on the floor until I got kind of used to it.

(Testimony of Theodore Thompson.)

When I came to Fort Des Moines I was not put in bed. I was able to be moving around. From then on, until the time I was discharged, I was around on crutches most of the time. During the time I was at Fort Des Moines I was operated on again. A piece of bone which the doctors called a spur had grown out from the bone. They gave me ether and put me under the operation and cut it off, I guess.

After my leg was amputated the first time, it was later cut off and made shorter. That was over in France, when I was at the base hospital. My leg was first cut off two inches above the knee in the field hospital in France. Then later, when I was at the base hospital in France, they cut it off higher up. And then, while I was in the hospital at Fort Des Moines they cut this spur off. I am pointing out to the jury the place where my leg is cut off, here. [37]

While I was at Fort Des Moines the condition of my stomach was such that I was having cramp spells, off and on, and vomiting. My good knee at that time was hurting. At that time, when I first attempted to walk, when I was learning to walk after I had crutches, I couldn't stand. I could not put my weight on my right knee. It wouldn't hold my weight on it. I was just like something was catching it in the joint.

I was discharged at Fort Des Moines on the 13th of August, 1919. At that time I was not still on

(Testimony of Theodore Thompson.)

crutches. At that time they had fitted me out with an artificial leg. At that time I was not able to walk without the aid of two canes or a crutch. At the time of my discharge the condition of my other knee was the same as it always was; just the same as I have heretofore described. The condition of my stomach was the same.

After I was discharged, I went back home to Reed Point, Montana. When I came out here to Reed Point and when I went into the army I was not married. I had a relative living here at that time. That relative was Mr. Carl Bue, a cousin. When I came back to Reed Point I first went to the ranch of a fellow who lived there by the name of John Barstad. He was a neighbor of mine prior to the time I went into the army. I do not remember now how long I remained with Mr. Barstad. It was just a few days. He lived about fifteen miles from the town of Big Timber, and I should judge about fourteen miles from the town of Reed Point. He lived about five or six miles from Carl Bue's place. [38] After leaving the Barstad place I went to Carl Bue's place. He is the cousin whom I mentioned. I then lived there with Carl for about three or four months. I was not remaining there steadily during that time. I was staying around among the neighbors, O. P. Terland, John Crone and Adolph Myrstol, who were all acquaintances of mine. I stayed a few days at those different places, and then would go back over to Carl Bue's place.

(Testimony of Theodore Thompson.)

I did not attempt to do any work while I was there at Carl's place or at any of those other places. While I was at Carl Bue's place the Government did not get in touch with me at all. They did write me and took up the matter of vocational training with me while I was there. I then went for examination to several different places. I was sent to Billings and I was also sent, I believe, to Livingston once. The Government then put me in vocational training at Bozeman. The type of training that they gave me was agriculture. The nature of the work that I had to do there while I was in training was lecture work and machinery work and farming. I had to judge stock while I was in training. With reference to machinery, we had to take it apart and put it together, and they gave me lectures, on how the machinery worked, and all about it. As a student, as far as farm work was concerned, I had to write down different names and different stuff. I was not able to do that. I could not write down the notes. I wrote down the notes, but I couldn't spell them right.

Q. Could you read them after you wrote them down? [39]

Mr. BROWN: Object to that as a conclusion, if the Court please.

The COURT: Yes; he can answer if he could read or write.

(Exception noted)

(Testimony of Theodore Thompson.)

Q. You may answer.

A. No, sir.

I had difficulty in understanding what the professors were saying in their lectures. At that time I was not able to understand English as well as I do now. I cannot recall now what all the other duties were that I had there in training, but it was several different things in the same line of duty. I was there in Bozeman all together about three months.

My physical condition while I was there in training was the loss of my left leg, and I was vomiting, my stomach trouble, and also my nervousness. At that time my nervous condition was jumpy and excitable. It was pretty hard for me to apply myself while I was there to study. I couldn't keep up in the class. Of course, I couldn't read and write the American language; I didn't have that experience. I was never schooled in this country. I had no schooling in this country at all after I came here. When I was up there at Carl Bue's place and Nepstad's place before the war, the workmen that were there were people from the old country, all of them. We talked Norwegian. I did not talk English when I went into the army to any extent. While I was in the army I picked up [40] considerable English.

Back before I was discharged from the army, I noticed this nervous condition that I mentioned as being present while I was in training. I first noticed that over in the Meuse-Argonne, after I came out.

(Testimony of Theodore Thompson.)

In that respect I was jumpy, and anything that was noisy or anything that was moving around, I was jumpy and nervous and shaky. That condition has remained with me since then and affects me now. On occasions when there is any excitement or anything like that I just get so nervous I can't hardly take care of myself. That was true also before I got out of the army.

After my training of three months I went back down home to Mr. Bue's place. I went back down there on the train. I left training because I couldn't keep up with the class, and my nervous condition, and I just got disgusted. I just can't remember now whether I informed the men in charge of my training that I was not able to get by or talked it over with them at all. We had a talk there, but I just can't quite remember what it was. I do not remember who it was that I talked to about it. I can't recall his name. I talked to the professors who were giving me instruction. It was a professor that was giving me the instruction that I talked to. I myself made up my mind that I was unable to take that type of instruction. I tried to inform them of that fact, too. At that time I made out a certain paper that they asked me to make out or signed some papers, but what it was in it, I don't know. I never afterwards took any training of any kind. [41]

This training was all at Bozeman. After leaving Bozeman, I came back to Carl Bue's place and remained there about a month. From there I went

(Testimony of Theodore Thompson.)

to Mr. Myrstol's. I lived at Myrstols' about a year and better. I was living there with him on his place. I was living in his house. I did not pay him anything for living there. I lived there over a year. His place was west of Reed Point, Montana, six miles. I obtained consent to live there. During that time I was baching all of that time. During that time I had assistance in getting wood. I didn't get the wood at all, but he had a lot of wood split there and he just told me if I could manage to get it in, to use it for cooking; or things like that, that I could just help myself to it. During that year and a half that I was on his place, other neighbors were coming over and helping me. I did not split wood during that time. Mr. Myrstol split it and some of the neighbors came over and they split an armful or two.

At the end of that period, I went on the homestead. From the time I was discharged, up until the time I went on my homestead, I did not attempt to do any work of any kind. I could not. I took up the homestead that I mentioned before I went to the war. There were improvements on the homestead when I went to the war. I had a house on it. After I came back, I did not place any further improvements on it. I had someone put some on it. I had Mr. Bue to fence the homestead. Mr. Bue was using the place while I was in the army. He was using it for pasture. After I moved up there, I then proved up the place. [42] At the time

(Testimony of Theodore Thompson.)

that I proved up, the proof that I offered showed certain improvements. All those improvements that were shown in my proof were on the homestead prior to the time I went into the army, outside of the fence. I just had a house and barn on the homestead. I had a team of horses. I stayed on the homestead for about six months, I would judge. I had this team of horses that I mentioned before the war. While I was in the army they were at Mr. Barstad's place. I was upon the homestead from four to six months, and then I went over to Terland's place. That is not a place that I owned. There was a farmer by the name of Hans Omdal with me, and he moved me over to that place. I asked Mr. Terland if I could live in his house, and he said "Yes." This was a vacant house that was on Terland's place. While I was up to the homestead a fellow by the name of Hans Omdal was up there with me during that time, and when I moved up to the Terland place, Hans moved with me. I had no work to do up there. I was at the Terland place about a year and a half or two years, and then I went to reside on the place where I am now living. During this year and a half or two years that I was there on Terland's place, there was somebody there with me. There was one person with me the biggest part of the time. That was a fellow by the name of Hans Omdal, the same fellow that was up to the homestead with me. I had no work to do at all there at Terland's place. I had

(Testimony of Theodore Thompson.)

two head of horses, but no other stock at all; and I had no crop of any kind.

I bought the place that I am living on now. [43] I paid \$2500.00 for it. I borrowed the money to buy it from Mr. Bue. He is the Mr. Bue I mentioned before as being my cousin. I gave him a mortgage as security for the loan on the place I bought and also on my homestead. Subsequently I paid back the twenty-five hundred dollars. I paid him back with my homestead, by selling the homestead to him. He did not call the indebtedness of twenty-five hundred square for the homstead. He credited me with twenty-four hundred dollars for the transfer of the homestead, and I still owed him a hundred dollars. There were 520 acres in this homestead. There were 320 acres in the place that I bought for the twenty-five hundred that he loaned me. Subsequently I bought some more land, in 1930 or 1931. I paid \$900.00 for that. I got that money by borrowing \$1800.00 from Carl Bue. I gave him security for that \$1800.00. I gave him a mortgage on the land. I have not paid him back that \$1800.00, nor any part of it.

Since I went up on this place that I am now living on, I have acquired stock, horses and things of that kind. I bought them with money from my compensation from the Government. The Government is paying me compensation because of my disability, and I was able to save enough out of the compensation to make the purchase of this stock.

(Testimony of Theodore Thompson.)

Since I have had the care of that stock up there, I have not been alone in the care of that stock. I have had to hire a man to take care of them. I got the money to pay the man from my compensation. I have not acquired enough income from the ranch to keep the ranch self-supporting. [44]

I have somewhere around forty head of cattle. That is as much stock as I have had at any time. I have not had that much all of the time. I started off with two head and later bought some others. The type of those cattle is range cattle. I have two milk cows. I do not do the milking myself. Off and on, if a hired man is not there, I can milk a cow, if she is gentle. I have attempted to milk a cow and I got hurt from it. As a general rule the hired man does the milking.

I have not attempted to put up hay myself. I have had to hire it done. There is a difference in the amounts of hay which I cut up there per year. As to what is the average yield there, over a period of years; I never did have the hay measured at any time, and I could not say just how much hay there is, but I would judge about thirty tons on an average. I do not know what is the highest yield I ever got off of it, but between fifty and seventy-five tons.

I am not able to get out in the field and drive a team. I have not done that at all since I got out of the army. I have not tried to harness a team since I got out of the army. I have tried to drive a team since I got out of the army. I have driven

(Testimony of Theodore Thompson.)

a derrick team since I got out of the army. That is a Jackson fork, which is the derrick I put up hay with. I am not able to follow along behind the team and drive it. I drive the team with a little cart that I am sitting on. I did not do any other work in putting up the hay besides driving this team on the [45] fork or derrick. I have attempted to ride horseback since I got out of the army, and I have ridden horseback. I can ride a gentle horse. When they go out in the pasture, then I ride a gentle horse. I can't ride a wild horse. It has got to be a perfectly gentle horse. I have put the saddle on sometimes, myself. To get up on the saddle, I have got to put my right leg in the stirrup and get hold with my hand on the saddle and pull myself up in the saddle and then throw my right foot over the saddle. I take my right foot out of the stirrup after I get up. At that time I am hanging on the fork of the saddle, and take my right foot out of the stirrup after I get up. If the horse would move, I would fall off and break my neck. I have not rode a horse often, but I have done it. After I get on a horse like that, I am just able to follow cattle in the road. I couldn't cut out cattle or run cattle, or run after cattle, or anything like that.

I have a car, and have driven my car. In driving my car I have got to put my right hand up here and pull out the gas feed, and then put my foot on the clutch and then change the gears. When I come to a hill, I have to shift gears at the end of the

(Testimony of Theodore Thompson.)

hill. I have to stop the car before I shift. I do not drive the car any distance. If I drive a distance, it affects me with nervousness and I hurt my back. The longest distance I generally drive is about twenty or twenty-five miles. When I drive that distance, at times I stop. When I get tired I stop on the road to rest. I have never attempted to drive in any [46] traffic in a city like Billings.

I got this money that I borrowed from Mr. Bue in cash, and put it in the bank. That is true of both the twenty-five hundred dollars and the eighteen hundred dollars.

The instrument which is shown me, marked for purposes of identification "Plaintiff's Exhibit 16," is my discharge from the army.

Mr. MOLUMBY: We will offer Plaintiff's Exhibit 16.

Mr. BROWN: We object to it as immaterial, and an incumbrance in the record. It is admitted in the pleadings that he was discharged from the army.

Mr. MOLUMBY: We offer it for the further purpose of showing his physical condition at the time he was discharged.

Mr. BROWN: We have no objection for that purpose, Your Honor.

The COURT: Very well, it will be admitted for that purpose.

(Testimony of Theodore Thompson.)

PLAINTIFF'S EXHIBIT 16,

was thereupon received in evidence, and is in the words and figures following, to-wit:

HONORABLE DISCHARGE FROM THE
UNITED STATES ARMY.

War Department,
The Adjutant General's Office,
Washington, April 1, 1921.

The records of this office show that this soldier served [47] in the St. Mihiel Offensive September 12 to 16, 1918; Meuse-Argonne Offensive September 26 to October 4, 1918; Ypres-Lys Offensive October 31, 1918 and that he was wounded in action October 31, 1918.

I. ERWIN,
Adjutant General.

TO ALL WHOM IT MAY CONCERN:

THIS IS TO CERTIFY, That Theodore Thompson #2,255,553—Private First Class, Company D, 347th Mach. Gun Bn.

THE UNITED STATES ARMY, as a Testimonial of Honest and Faithful Service, is hereby Honorably Discharged from the military service of the United States by reason of Certificate of Disability per 4 Ind. Hq. C. D., Chicago, Ill. Aug. 4, 1919.

Said Theodore Thompson was born in Ogne, in the State of Norway. When enlisted he was 24 years

(Testimony of Theodore Thompson.)
of age and by occupation a Farmer. He had Blue eyes, Brown hair, Fair complexion, and was 6 feet 0 inches in height.

Given under my hand at U. S. A. Gen. Hosp. No. 26, Ft. Des Moines, Ia. this 13th day of August, one thousand nine hundred and nineteen.

C. W. HAVERKAMFF,
Lieut. Colonel, M. C. U. S. A.
Commanding.

Fort Des Moines, Iowa, Aug. 13, 1919.

Paid in full \$130.80.

P. V. KUHN,
Captain, Q. M. C.

D. C. No. 278440.

Soldier entitled to reduced transportation from Des Moines, Ia. to Big Timber, Mont. [48]

ENLISTMENT RECORD.

Name: Theodore Thompson.

Grade: Private First Class.

Enlisted, or Inducted, Sept. 19, 1917, at Big Timber, Mont.

Serving in First enlistment period at date of discharge.

Prior service: None.

Keogh Quartermaster Intermediate Depot, Fort Keogh, Montana, May 1, 1921.

(Testimony of Theodore Thompson.)

Clothing issues this date 1 Gas Mask, 1 Helmet, 1 Poncho, 1 pr. Gloves, 1 cap Overseas, 1 Belt Waist.

FRANK BARR,

Captain

Quartermaster Corps, U. S. A.

Noncommissioned *offer*: Never.

Markmanship, gunner qualification or rating: Not rated.

Horsemanship: Not mounted.

Battles, engagements, skirmishes, expeditions: Belgium, Oct. 31, 1918.

Knowledge of any vocation: Farming.

Wounds received in service: Shrapnel wound of left knee.

Physical condition when discharged: Poor.

Typhoid prophylaxis completed Unknown.

Paratyphoid prophylaxis completed Unknown.

Married or single: Single.

Character: Excellent.

Remarks: No A.W.O.L. No list time under G.O. 31-1912 or G.O. 45-1914. Served in France and Belgium. Left U. S. July 5, 1918. Arrived in U. S. Jan. 1, 1919. Services honest and faithful.

Signature of soldier: Theodore Thompson. [49]

W. G. BUTLER,

Captain S. C., U. S. A.

Commanding Det. of Patients

(Testimony of Theodore Thompson.)

Silver Victory Button issued per Cn. 187 W. D.
1919.

Transportation Furnished. A. T. Hammer.

Union Station, Aug. 13, 19. Des Moines, Iowa.

Mr. MOLUMBY: If the Court please, at this time we now offer, for the purpose of the record, to surrender the policy of war risk insurance, being policy number K 310,168; marked "Exhibit 11," and the envelope "Exhibit 12."

Mr. BROWN: No objection, Your Honor.

Mr. MOLUMBY: We offer it, to be cancelled in the event the plaintiff prevails.

The COURT: It may be received.

Mr. MOLUMBY: And we also offer the exhibits now, Your Honor, for proving the portion that appears on the face of the policy and on the envelope in which it is contained.

PLAINTIFF'S EXHIBIT 11,

being converted government life insurance policy No. K 310,168, in the principle sum of Five Thousand Dollars, issued by the United States Government to Theodore Thompson, and effective from and after July 1, 1921, was thereupon received in evidence and is omitted from this bill of exceptions in compliance with Rule 10, sub-division 2 of the Rules of this Court. [50]

(Testimony of Theodore Thompson.)

PLAINTIFF'S EXHIBIT 12

being the envelope in which the above described insurance policy was enclosed, was thereupon received in evidence, and is omitted from this bill of exceptions in compliance with sub-division 2 of Rule 10 of the Rules of the Court.

Cross Examination

of the Plaintiff, Theodore Thompson

By Mr. BROWN:

I came to the United States in 1912 in the middle of April, and went then to the home of my cousin, Mr. Bue. At that time I was 19 years old. When I left Norway I had the equivalent of a Seventh Grade education in a Norwegian school. I could read and write the Norwegian language. As to whether I had attempted to study any English before coming to this country, knowing that I was coming; I did not have much chance to study any English. I did not try to do it, because I had to be out working and working for my living all the time.

I landed in the United States at New York, and came direct from New York to Mr. Bue's place in 1912. Between 1912 and the time that I went into the army I did not go to any school in the United States. I did not study any English in the United States. As to whether I had learned to speak the

(Testimony of Theodore Thompson.)

language at all when I enlisted in 1917, five years after I had come here; it was just what little that was talked, a few words, common words, right among the Norwegians. As to whether I needed an interpreter with me when I talked with [51] someone who did not talk Norwegian; I just had to talk by my hands or the best way I could. In 1917, when I went into the army, I did not have to either talk by my hands or have an interpreter. I could understand, but I could not talk to them. Maybe it is correct to say that I could understand, but I could not make anybody else understand me. I could not write the English language when I enlisted in the army, and I was unable to read. I was unable to write when I went into the army in 1917, except to sign my name. I could sign my name. Outside of that, I could not write. I did not go to any school in the army to learn English nor to learn to read and write. I did not learn to read and write in the army.

Referring now to Defendant's Exhibit 9 which is handed me, that is my signature on that exhibit. I observe the date here, September 10, 1919. At this time, when that paper was signed, this question was asked me, "Can you read newspapers in English?" to which I answered "Yes;" and this question was asked me, "Can you write a letter in English?" to which I answered, "Yes," on September 10, 1919. That was not a true answer to those two questions. I made that answer, if it was not true,

(Testimony of Theodore Thompson.)

because I must not have understood the question. I was dealing then, as I knew, with the Government, requesting vocational training at that time. That statement that I made at that time was not a true statement when I made it, because I could not read or write. I have not learned to read or write yet. I can read the common words, but I can't read any high words. [52] I read in a newspaper and understand some of it, but I can not understand it all. I know of dictionaries, and know what a dictionary is. I have looked into a dictionary when I have been doing some reading, to find out the meaning of words; but I go to considerable time. It takes considerable time.

As to my writing, I do not do any writing, I can't write a letter.

From 1912 to 1917, when I was inducted into the army, my occupation was working around on ranches and farming and around stock. As a matter of fact, I was herding sheep at times, too. I was herding sheep and other work. There were several different kinds of wages for herding sheep. I was receiving eighty dollars a month and fifty dollars a month for herding sheep. I really could not remember just how many months it was that I was receiving eighty dollars a month. As to whether it is a fact that there was one month in each year that I received eighty dollars, and that was the month of May; it was maybe one month, maybe two months. I could not remember now just how many months

(Testimony of Theodore Thompson.)

it was. And for the rest of the time I received fifty dollars, the other eleven months of the year. I received fifty dollars a month for some months. I could not say how many months of a year I did receive fifty dollars. Maybe it was eleven months of the year that I received fifty dollars, or maybe it was three months or maybe it was ten months; I couldn't say. I can't say, because I can't remember that far. I can't remember any wages that [53] I was receiving just before I went into the army. I can't really remember just how much it was.

When I first went into the army I first went to Camp Lewis. One night I stepped into some hole there during maneuvers. I had measles and mumps there. I was in the hospital for the measles and the mumps. I stepped into this hole before I had the measles. I could not say how long it was before I had the measles, but it was some before I had the measles. As to how it affected me when I stepped into the hole, and how my leg felt right after I got out of it; it was paining and hurting and sore. It pained me right in the knee joint. I could not tell right after it was hurt whether it was swollen or not, because it was dark at night, and I couldn't see anything. I looked at it after I got back to my barracks, but I couldn't see any swelling; but it was hurting and paining. It swelled some the next day. As to how much it swelled the next day; it seemed, like the swelling was getting tight around the knee joint. I could not tell how long it was swollen. I did not report that to any doctor in the camp. There were doctors there at

(Testimony of Theodore Thompson.)

that time and there was a hospital there at that time. My leg was hurting me at that time, but it was not hurting enough that I really thought I needed hospital care. I did not go right along performing my regular duties. I was staying in the barracks. I told the Captain my leg got hurt, and he says, "You better stay in the barracks a few days." I could not possibly remember how long it was that I stayed in the barracks. I stayed there [54] somewhere around a week. I could not say exactly if I stayed there as long as ten days; but it was around a week's time. I did not do any work while I was in the barracks. My leg was hurting me at that time, and I did not ask for any medicine from the physicians or from the doctors there in the hospital. I did not use any treatment on it at all. I reported it to no doctor there at Camp Lewis. I said that my leg has hurt me all of the time from that time up to the present time, and that is true. After I hurt this leg I went into the hospital and remained two months. My leg was not hurting me while I was in the hospital. I told Mr. Molumby that my leg has hurt me continuously from the time I stepped in that hole until the present time. That is true. It hurts by spells, once in a while. It does not hurt all the time, every day. It hurts for a week or two and then it hurts again. It does not go as long as a month without hurting. I was in the hospital with measles and mumps about a month or six weeks.

(Testimony of Theodore Thompson.)

Q. Well, it went for a month or six weeks at that time, without hurting, didn't it?

A. Well, I was on my back.

I can't remember whether it went for a month or six weeks without hurting while I was in the hospital. I can't remember whether it hurt or not. I can't remember whether I asked any doctor, while I was there, for any treatment for my leg at that time or not. I don't know if I did or not. I can't remember whether I did or did not [55] report to the doctor that I had been hurt at that time while I was in the hospital.

It was about three months after I left the hospital, after the measles and mumps, before I went to New York. Before I went to New York, during that three months, I had not been training very much in Camp Lewis. I did not do very much marching the last three months I was there. But whatever training and work my company did, I did too. I stayed in New York, or the camp to which I went from Camp Lewis, about a week, I would judge. I did not do any training there. Then I went over to France. Before I went up to the front line in France I trained about three or four months. I marched then in my training and was on my feet a number of hours each day. At times they worked hard, and I did that work. My knee was paining me then. It did not pain me every day. I did not ask any of the doctors for any treatment

(Testimony of Theodore Thompson.)

for my knee at that time. I did not report to them that I was suffering from my knee. I do not remember if I did or did not ask to be detailed to any lighter duty on account of my knee; I couldn't remember.

Then I went into the front line trenches with my company. There were a great many hundreds of other men up there. With reference to this water that I testified to having drunk; the other soldiers up there were drinking the same water that I was drinking, so far as I know. With reference to the food that I have testified that I ate; the other soldiers up there were being served the same food that I got. They got no different food than I got. I could not [56] really possibly say when it was that I first noticed the cramps in my stomach the first time. That is so long ago now that I don't remember, but I believe it was in the Argonne. It was just shortly after I went up there that I noticed those first cramps in my stomach. Each attack of those cramps would continue for ten or fifteen minutes. I was sick to my stomach and vomiting. It would probably not be more than once a day or twice a day that I would vomit. It would come on me sometimes worse than others, and I couldn't possibly say how many times they were coming on every day, because sometimes there would be one or two spells, and the next day I would not have any spells and the next day three or four spells, and so on.

(Testimony of Theodore Thompson.)

Q. Now, when did you first report that to the doctors in the army?

A. Well, there was no doctors there to report to.

There was a doctor there when my leg was amputated. He came up when the leg was amputated. As long as a man could move around, he was in the fighting. I went back one time to a rest camp. There were doctors there at the rest camp. I was having trouble in my stomach at that time. I reported it to the doctors at that time. I asked for some medicine, and he gave me some medicine. He gave me salts. That is all the medicine I got. He did not give me any other medicine.

After my leg was taken off at the first aid station and I was sent back to the base hospital, I received no treatment for my stomach condition at the base hospital [57] that I know of. I do not remember if I did or did not ask for any treatment. I was so sick at the base hospital that I can't remember whether I was telling the doctors that I was having trouble with my stomach or not. I do not believe I did tell them that I was having trouble with my stomach. I don't remember now if I did or did not have trouble with my stomach coming back on the hospital ship. When I was in Fort Des Moines I was having difficulty with my stomach. I was at Fort Des Moines about six months. During that six months I was having trouble with my stomach off and on, having cramps and vomiting. I have told Mr. Molumby that I received no treatment for

(Testimony of Theodore Thompson.)

that, I do not remember if I did or did not ask for any treatment. I cannot remember now if I did or did not tell the doctors at Fort Des Moines that I had trouble with my stomach and had had it since I was in the Meuse-Argonne. I don't remember whether I told them about it. As to why I did not ask for treatment for my stomach, if I had this trouble; I had an examination by the doctor, and they ought to know what condition I was in. In those examinations the doctors asked me how I felt and I told them how I felt, but he says that was the stomach trouble and I would get over it. As a matter of fact, I did tell them about my stomach. I remember that I did tell them about it, now; and he told me I would get over it, but he did not give me any medicine for it at all, as I remember now.

Q. Well, in telling him about your stomach trouble, did you tell him how long you had had it? [58]

A. I told him where I got it from, and he said, "Oh, that will get over in time when you get proper food."

I told him when and how I got it, and where I expected it came from, and how long I had had it, and he said it would get over when I got proper food. He told me that it could not be cured by medicine, but could be cured by proper food. This was in Fort Des Moines, Iowa. I could not tell what time that was. I don't remember.

(Testimony of Theodore Thompson.)

I went into the base hospital in France in the first part of November, 1918, and I was in hospitals from the first part of November, 1918, until August of 1919, and the doctor there told me when I got proper food my stomach trouble would be cured. After I told the doctor about my stomach trouble and he told me that proper food would cure me, I did not see any change in the food they were giving me. I did not see any change in my stomach at all while I was in the hospitals from November, 1918, to August, 1919. The spells come on me off and on, and I still had the spells, still had cramps, still vomitted and still had diarrhea all the time I was in the hospital, off and on. And I told the doctor and he said that when I could get proper food that that would all disappear.

I do not remember now what he said with reference to my knee. He said something, but I don't remember what it was. My knee was hurting me in the hospital. It was not hurting all the time. It was hurting by spells from November of 1918 to August of 1919. I told the doctor about that, and he said he didn't know what he could do for it. [59] I told him I got strained there in Camp Lewis, Washington, and twisted my knee, and that it had hurt me at intervals ever since that time. And the doctor told me he didn't know what he could do for it. He did not give me any treatment. He did not give me any medicine or any liniment of any kind to put on there, as I remember. I do not remember if they did or did not take me down to

(Testimony of Theodore Thompson.)

X-ray that knee to see if anything was wrong. I believe I would have remembered it if they had. I told the doctor about my knee hurting, on several occasions; and each time he told me he couldn't do anything about it. I talked to more than one doctor about my knee.

Q. And each doctor that you talked to said, while you were in the army hospitals, the base hospital and in the hospitals in the United States, all of them told you that they could not do anything for it?

A. They didn't seem to know to do anything for it, because it was in the knee joint.

All of them told me that. I couldn't remember now how many of them told me that, but I know it was more than one.

When I was discharged from the army at Fort Des Moines, my left leg was off and I had this stomach trouble. My stomach was bothering me when I was discharged, and my knee was paining off and on and had pained me while I was in Fort Des Moines. And I was nervous. That is my signature upon the exhibit which is handed me, marked as the Defendant's Exhibit 7. The exhibit is sworn to by me on the 13th day [60] of August, 1919. That was the date of my discharge. At that time this question was asked me, "Nature and extent of disability claimed," and I have there only, "Amputation of left thigh middle third." At that time I did not mention this stomach trouble that

(Testimony of Theodore Thompson.)

I say existed, because they ought to know what ailed me; I was in the hospital. I do not know why I did not mention this stomach condition at that time, and why I signed this and said that was all that was wrong with me at that time. I do not know why I did not tell them about my nerves at this time, when I said that all that was wrong with me was the loss of my leg. I do not know why I did not tell them at that time about this pain in the knee that I had.

Q. Well, then, when you told them, when you signed this paper, that the only disability that you had was the one that arose from the amputation of your leg, you were not telling them the truth, were you?

A. I don't know what I was telling them.

I do not know why I did not tell all of it. I do not know of any reason that I had at that time for not telling the Government, when I was claiming compensation, that I had this trouble with my stomach. I do not know why I should withhold that information from them. If I was nervous at this time, I do not know of any reason for not telling the Government.

Mr. BROWN: If the Court please, I offer in evidence now the Defendant's Exhibits 7 and 8, which I have just examined the [61] witness about.

Mr. MOLUMBY: We have no objection.

(Testimony of Theodore Thompson.)

DEFENDANT'S EXHIBITS 7 AND 8,

being detached portions of the same instrument, were thereupon received in evidence, and are in the words and figures following, to-wit:

File No. C.....

Treasury Department
Bureau of War Risk Insurance.

APPLICATION OF PERSON DISABLED IN
AND DISCHARGED FROM SERVICE.

Read With Great Care.

You must furnish the information called for in this application, and support your answers with proof called for in these instructions, as part of your claim under the act of Congress of October 6, 1917. Every question herein must be answered fully and clearly. Answers and affidavits should be written in clear, readable hand, or typewritten, and if you do not know the answer to a question, say so.

1. Forward with this application a certified copy of your certificate of discharge from the service. If at the time of your discharge or resignation you obtained from the Director of the Bureau of War Risk Insurance a certificate that you were then suffering from injury likely to result in death or disability, the original or a certified copy of such certificate of disability should be forwarded with this application as part of your claim.

2. You should also inclose a report by your attending [62] or examining physician. If you are

(Testimony of Theodore Thompson.)

receiving treatment in any hospital, sanitarium, or similar institution, you may submit the hospital report or record of your case, showing your physical condition, the origin, nature, and extent of your disability, and the probable duration of such disability.

3. If you have a wife or children, the fact that your wife and children are living must be shown by the affidavits of two persons, who should also state whether you and your wife and children are living together or apart, and whether or not you are divorced.

4. Your marriage must be proven by a certified copy of the public or church record, or if this is not obtainable, by the affidavit of the clergyman or magistrate who officiated, or by the affidavits of two eye-witnesses to the ceremony, or of two persons who have personal knowledge of your marriage. If either party was divorced from a former wife or husband, that fact should be shown by a verified copy of the court order or decree of divorce.

5. Ages of children must be shown by a certified copy of the public record of birth, or the church record of baptism, or if these are not obtainable, by the affidavits of two persons, giving the name of the child, the date and place of birth, and the names of both parents.

6. If claim is made on account of a stepchild, it must be shown by the affidavits of two persons whether such child is a member of the claimant's

(Testimony of Theodore Thompson.)

household, and if claim is made for an adopted child a certified copy of the court [63] letters or decree of adoption must be submitted.

7. If additional compensation is claimed for a dependent parent, relationship to such parent must be shown by a certified copy of the public record of the claimant's birth, or the church record of his baptism, or, if such evidence can not be obtained, by the affidavits of two persons. Whether or not the dependent parent for whom compensation is claimed is a widow or widower should be shown by the affidavits of two persons, who must state the specific amount of annual income from each separate source, the location and value of all property, real and personal, owned by said dependent, his or her physical condition, employment and earnings, and the amount of the disabled person's average monthly contribution to the support of the dependent parent. The parent claimed for should be one of the persons to make affidavit to these facts, if mentally competent.

8. The affidavits of two persons required in support of your claim should be made on the blank form on the last page of this application.

All papers which you send this bureau must bear your full name, former rank, and organization. The number C278440 must also appear upon each paper.

Deputy Commissioner.

(Testimony of Theodore Thompson.)

(1)

PENALTY.

Sec. 25. That whoever in any claim for family allowance, compensation, or insurance, or in any document required by this act, or by regulation made under this act, makes any [64] statement of a material fact, knowing it to be false, shall be guilty of perjury and shall be punished by a fine of not more than \$5,000, or by imprisonment for not more than two years, or both.

1. Full name, Theodore Thompson.

2. Address, Grey Cliff, Montana.

3. Under what name did you serve? Theodore Thompson. (a) Serial No. 2255553.

4. Color, White. Date of birth, July 31, 1893. Place of birth, Norway.

5. Make a cross (X) after branches of service you served in: General Service Limited Service Army X Navy Marine Corps Coast Guard

6. Date you last entered service, Sept. 19, 1917. Place of entry, Big Timber, Montana.

7. Rank or rating at time of discharge, Private 1 Cl.

8. Company and regiment or organization, vessel or station in which or on which you last served, Co. D 347 M. G. Bn.

8a. State fully any other service in the military or naval forces of the United States. None.

(Testimony of Theodore Thompson.)

9. Date and place of last discharge, August 13, 1919, Ft. Des Moines, Ia.

10. Cause of discharge. Certificate of Disability.

11. Nature and extent of disability claimed, Amputation of left thigh middle third.

12. Date disability began, October 31st, 1918.

13. Cause of disability, Shrapnel wound, severe, to left knee. [65]

14. When and where received. Incurred in action in Belgium, Oct. 31, 1918.

15. Occupations and wages before entering service. Farmer \$60.00 month.

16. Last two employers: Carl Bue, Grey Cliff, Mont. 1915.

17. Occupations since discharge, dates of each, and wages received; if less than before service, why—none.

18. Present employer None.

19. Name and address of doctor or hospital treating you—U.S.A. General Hospital #26, Ft. Des Moines, Ia.

20. Are you confined to bed? No. Do you require constant nursing or attendance? No.

21. Name and address of nurse or attendant, None.

22. Are you willing to accept medical or surgical treatment if furnished? Yes.

23. Are you single, married, widowed, or divorced? Single.

24. Times married

(Testimony of Theodore Thompson.)

- 25. Date and place of last marriage
- 26. Times present wife has been married
- 27. Maiden name of wife
- 28. Do you live together?

(2)

29. Have you now living a child or children, including stepchildren and adopted children, under eighteen years of age and unmarried?

30. If so, state below full name of each child
* * * None.

31. Have you a child of any age who is insane, idiotic, or [66] otherwise permanently helpless? None.

32. State whether your parents are living together, separated, divorced, or dead. Living together.

33. Give name and address of each parent living. (Mother) Anna Thompson (Father) Carl Thompson, Ognå, Norway.

34. Age of mother, about 50. Age of father, about 55.

35. (a) Is your mother now dependent upon you for support? Yes. (b) Is your father now dependent upon you for support? Yes. (c) If so, your average monthly contribution to your mother, \$25.00. Your father, \$25.00.

36. (a) Value of all property owned by your mother, \$10,000.00 jointly. Your father, \$10,000.00

(Testimony of Theodore Thompson.)

(b) What is the annual income of your mother?
Unknown. Your father? Unknown.

37. Did you make an allotment of your pay?
None.

38. If so, to whom? None. About \$ None.

39. Give number of any other claim filed on
account of this disability, and place filed—None.

40. Did you apply for War Risk Insurance?
Yes.

41. When and where? Sept. 1917, Camp Lewis,
Washington.

42. Insurance certificate number

43. Name of beneficiary (Father) Carl Thomp-
son.

I make the foregoing statements as a part of my
claim with full knowledge of the penalty provided
for making a false statement as to a material fact
in a claim for compensation or insurance. [67]

THEODORE THOMPSON

(Signature of Claimant.)

Subscribed and sworn to before me this 13th day
of August, 1919, by Theodore Thompson, claimant,
to whom the statements herein were fully made
known and explained.

F. G. CARPENTER,
2nd Lieut. SC. USA.
Notary Public.

Base pay \$33.00.

Discharged Aug. 13, 1919.

W. G. BUTLER

Capt. SC. USA.

(Testimony of Theodore Thompson.)

(3)

(Page numbered 4 of said exhibit appears as a form for use as an affidavit; same not being filled out in any particular.)

Stamped upon page 4 of said instrument appears the following: "Claims, Compensation & Insurance. Aug. 18 1919."

The signature appearing upon the letter which is handed me, marked "Defendant's Exhibit 5," dated at Grey Cliff, Montana, December 18, 1919, written to the Bureau of War Risk Insurance, Washington, D. C., is my signature. I signed that. I state in that letter, "I was wounded in Belgium Oct. 31, 1918, by a high explosive shell, and suffered amputation of left leg above the knee, and minor injuries about the face," and that was true. Those injuries about the face are a scar on my face. I also say in the letter, "I note that a number of men similarly injured are drawing their insurance. I am writing you to inquire whether or not I am entitled to do likewise. I am drawing \$30.00 per month compensation and am totally and permanently disabled [68] in so far as my former occupation of farming is concerned. My records in the army bear my name, Theodore Thompson (2255553), Pvt. 1st class, Co.D. 347 Machine Gun Battalion, 91st Division. I was discharged Aug. 13, 1919, at Fort Des Moines, Iowa. Very truly yours, Theodore

(Testimony of Theodore Thompson.)

Thompson." In that letter, in which I was detailing what happened to me in France, I said nothing about inhaling gas. I do not know what my reason was for not telling the Government that I received injuries or diseases in France by the inhalation of gas. I said nothing in this letter, in detailing my diseases and injuries, about suffering with stomach trouble from drinking water and from eating food that was not fit to eat. I do not know what my reason was for not doing so. I do not know why I concealed those facts from the Government. I said nothing in this letter about my having diarrhea. I do not know why I concealed that information from the Government. I said nothing in this letter about having received an injury to my right knee in Camp Lewis. I do not know why I didn't say so.

Q. Well, the reason was that you never received the injury, wasn't it; wasn't that the reason?

A. Yes, I got the injury; yes.

I do not know why I did not tell them about it. I don't know whether I was trying to tell them truthfully all that happened to me while I was in the army. I didn't tell them, is all. As to whether I was not telling the truth when I wrote this letter; I didn't tell them, I don't know why. My knee was still paining me at that time. I had [69] the cramps at that time, and I had the diarrhea at that time. I was vomiting at that time and was still nervous at that time, and I was claiming my insurance from the Government at that time.

(Testimony of Theodore Thompson.)

Mr. BROWN: We offer in evidence, if the Court please, the Defendants' Exhibit 5.

Mr. MOLUMBY: No objection— Just a moment, Your Honor, however we do have an objection if it is offered for the purpose of re-opening the matter that is already decided.

Mr. BROWN: Not offered for that purpose, Your Honor.

The COURT: It will be received, if it is not offered for that purpose.

DEFENDANT'S EXHIBIT 5.

Grey Cliff, Mont.

Dec. 18, 1919.

Bureau War Risk, Ins.,
Washington, D. C.

Dear Sirs:

I was wounded in Belgium Oct. 31, 1918 by a high explosive shell, and suffered amputation of left leg above the knee, and minor injuries about the face. I note that a number of men similarly injured are drawing their insurance. I am writing you to enquire whether or not I am entitled to do likewise. I am drawing \$30.00 per month compensation and [70] am totally and permanently disabled in so far as my former occupation of farming is concerned.

My records in the Army bear my name, Theodore Thompson (2255553), Pvt. 1st. class, Co. D 347

(Testimony of Theodore Thompson.)

Machine Gun Battalion, 91st. Division. I was discharged Aug. 13, 1919, at Fort Des Moines, Iowa.

Very truly yours,

THEODORE THOMPSON

That is my signature on Defendant's Exhibit 10, a Government record dated July 6, 1921. And that is my signature under that, "Theodore Thompson." As to whether it is true that I state there over my signature, "I do hereby certify that I am now, to the best of my knowledge and belief, in as good health as I was at the date of my discharge or at the expiration of the grace period, whichever is the later date," on July 6, 1921; I do not know if it is that or not. I cannot read it. There are words in there that I don't understand. I do not understand this word here, "expiration," and this other word, "discharge." I do understand that it says there the date of my discharge and I understand that it says that I am in as good health as I was at the date of my discharge. I do not know whether that is true. I know that I was in the same health on July 6, 1921, as I was when I was discharged. As to whether I had told the Government in August 13, 1919, when I was discharged, "Nature and Extent of Disability, claimed, amputation of the left middle third," and that is all I claimed; that is all he has got [71] on there. I don't remem-

(Testimony of Theodore Thompson.)

ber if I was in good health on July 6, 1921. I could not remember whether my health was good or poor in July of 1921. At the time that I signed this document here I was telling the Government the truth to the best of my knowledge at that time. I signed it. That is my signature.

Mr. BROWN: Then we offer this (Defendant's Exhibit 10) in evidence, if the Court please, and we also offer the portion on the back; that is, the Doctor's certificate. We are offering the whole thing because counsel has requested the whole document.

Mr. MOLUMBY: No objection.

The COURT: It will be received in evidence.

DEFENDANT'S EXHIBIT 10.

Treasury Department
Bureau of War Risk Insurance
Insurance Division.

Date, July 6, 1921.

Amount inclosed \$.....

REINSTATEMENT APPLICATION FOR
TERM INSURANCE AFTER DISCHARGE
FROM THE MILITARY OR NAVAL
SERVICE.

Read carefully the following conditions: In all cases applicant should fill in all data down to first heavy double line.

(Testimony of Theodore Thompson.)

Name (print in full) Theodore Thompson.

Present Address, Grey Cliff, Mont.

Certificate No. T-1719358.

Date of Discharge, Aug. 13, 1919.

Army serial No. 2255553. [72]

Amount of insurance originally carried,
\$10,000.00.

Rank and organization on original application,
Co. D 347 Machine Gun Bn.

Last month you paid your insurance premium,
August, 1919.

Have you applied for compensation? (Yes or
No.) Yes.

Are you drawing compensation? Yes.

If so, Claim No. C-278440.

Amount of insurance you desire to reinstate,
\$5000.00.

I desire this reinstatement to be effective (check
below):

- X The first day of the month in which the
requirements have been complied with, or
.....The first day of the following month.

Pay your premiums promptly each month follow-
ing your month of reinstatement.

REQUIREMENTS OF REINSTATEMENT.

Payment of Two Monthly Premiums on the
amount of insurance you wish to reinstate, and—

If your insurance lapsed before July 1, 1920 (that
is if the May, 1920, premium was not regularly

(Testimony of Theodore Thompson.)

paid or payment of premiums ceased prior to that month) and—

I. (a) Your month of discharge is not more than 18 months prior to the month of this application— (a) Complete Form 1.

(b) Your month of discharge is more than 18 months prior to the month of this application— (b) Complete Forms 2 and 4.

(a) Above expires December 31, 1920, inclusive. [73]

(b) Above expires June 30, 1921, inclusive.

If your insurance lapsed on or after July 1, 1920 (that is, in May, 1920, premium was regularly paid and failure to pay premiums occurred thereafter), and—

II. (a) Has not been lapsed for a longer period than 3 months— (a) Complete Form 2.

(b) Has been lapsed for 3 months and not more than 6 months— (b) Complete Forms 2 and 3.

(c) Has been lapsed for 6 months and not more than 18 months— (c) Complete Forms 2 and 4.

NOTE.—After properly completing the data necessary, return this application, together with two monthly premiums on the amount of insurance you desire to reinstate, to the Premium Receipts Subdivision, Bureau of War Risk Insurance, Washington, D. C.

(Testimony of Theodore Thompson.)

Form No. 1. (This form will not be used on or after January 1, 1921. To reinstate on or after that date use both Forms 2 and 4 (under I-a)).

I do hereby certify that I am now, to the best of my knowledge and belief, in as good health as I was at the date of my discharge or at the expiration of the grace period, whichever is the later date.

THEODORE THOMPSON.

(Signature of Applicant.)

July 6, 1921.

(Date of Signature.)

Form No. 2.

I hereby certify that I am now in good health.

THEODORE THOMPSON.

(Signature of Applicant.)

July 6, 1921.

(Date of Signature.) [74]

Form No. 3. Short Medical Certificate (To be completed by Medical Examiner.)

(Form No. 3 not used. Omitted from copy of Exhibit.)

Note.—Section 25 of the War Risk Insurance Act provides that “whoever * * * makes any statement of a material fact knowing it to be false, shall be guilty of perjury and shall be punished by a fine of not more than \$5,000, or by imprisonment for not more than two years, or both.”

Form No. 4. Full Medical Examination. (Medical Examination at Applicant's Expense.)

(Testimony of Theodore Thompson.)

Applicant should fill in all data to first heavy double line in presence of Medical Examiner.

(a) Date of birth, July 31, 1893, Age, 27. Occupation, Farmer.

(b) Family record.

	Age if living.	Health good or bad.	Age at death.	Cause of death.
Father	60	Good		
Mother	55	Good		
Number living	25	Good		
Brothers	23	Good	9 mo.	Not known.
Number dead	22	Good		
Number living	20	Good		
Sisters				
Number dead	18	Good	0	

(c) What operations have you had? Give dates.

(c) Amputation Left leg, Lower 3rd Thigh, Nov. 1, 1918.

(d) Have you ever used wines or liquors to excess? (d) No.

(e) Do you now use or have you ever used opium, morphine, chloral, cocaine, or any other narcotic drug? (e) No.

(f) Have you ever been treated for any disease of the brain or nerves, throat or lungs, heart or blood vessels, [75] stomach, liver, intestines, kidney or bladder, or other genito-urinary organs, skin, bones, glands, ears, or eyes? If yes, state which and describe fully. (f) No.

(Testimony of Theodore Thompson.)

Signed by Applicant in the presence of the Medical Examiner on this 6th day of July, 1921.

THEODORE THOMPSON

(Signature of Applicant)

L. W. BASKETT

(Signature of Medical Examiner)

MEDICAL EXAMINER'S REPORT.

(To be filled in by Medical Examiner).

(a) Physical Characteristics: Sex, Male. Complexion, Fair. Color of hair, light. Color of eyes, Gray. General figure, Erect. Height (in shoes) 5 ft. 10 in. Weight (without coat and vest), estimated lbs. or weighed, 149½#. Girth of chest: Normal, 38½; full inspiration, 40½; expiration 36½; Girth of abdomen, 33.

(b) Pulse: Before exercise, 74. Immediately after, 82. One minute later, 76. Two minutes later, 76.

Note.—Blood pressure is required (a) when applicant is more than thirty years of age; (b) in all cases where there is family history of apoplexy, heart disease, or nephritis; or where there is personal history of gout, rheumatism, syphilis, heart disease, or any evidence of kidney disease.

(c) Blood pressure (see note): Systolic 120, Diastolic 78. Instrument used, Tykos.

(d) Is there any irregularity in the heart action? No. Is there any atheroma? No.

(Testimony of Theodore Thompson.)

(e) After examination do you find any abnormality of the [76] lungs, heart, nervous system, skin, ears, eyes, or abdomen? If none, answer "No exceptions;" otherwise describe fully. (e) No exceptions.

(f) 1. Are you sure that specimen examined was that of the applicant? (f) 1. Yes.

2. Does applicant suffer from nocturnal urination? (f) 2. Yes.

3. If suspicion of abnormality, examine prostate. (f) 3.

Specific gravity, 1020. Reaction, Ac. Albumen, Neg. Test used, Heat and HNO₃. Sugar, Neg. Test used, Haines.

(g) Has applicant ever had syphilis, gout, or rheumatism? (g) No.

(h) Has applicant lost an eye, hand, or arm, foot or leg? L. Leg.

(i) Is ability to work impaired in any way? Yes.

(j) Any deformity or departure from normal in any respect? (j) L. Leg as above. Otherwise, No.

(k) Do you recommend the applicant for insurance? (k) Yes. If applicant is a woman, complete the following to double line. (Not filled out in form, and omitted from copy of exhibit.)

(p) Are you related to the applicant by blood or marriage? (p) No.

(q) Are the answers to these questions in your own handwriting? (q) Yes.

(Testimony of Theodore Thompson.)

The medical examiner must not be a relative of the [77] applicant by blood or marriage. The examiner must identify the applicant.

Examination made and signed at Examiner's office on July 6, 1921. (Name of State in which you are licensed to practice medicine.) Montana.

L. W. BASKETT,

(Signature of Examiner.)

Big Timber, Montana.

(Professional Address.)

(Stamped on the face of the exhibit, the following):

“Approved, Insurance Medical Section, Jul 19 1921 C# 278,440, By H. L. Mann, MTW.”

This was an application that I made to reinstate or convert my five thousand dollars worth of Government insurance, to insure me for five thousand dollars; and I did that. After this application went in and the examination was had by the Doctor, I received an insurance policy, from the Government, in the principal sum of five thousand dollars. I do not know if the Government promised in it to pay my beneficiary, at my death, five thousand dollars, or to myself, if I became totally and permanently disabled after 1921, the sum of \$28.75. I have read my policy.

I am still paying premiums on that policy. They take it out of my check.

(Testimony of Theodore Thompson.)

Since I left Des Moines, Iowa, and was discharged from the Government hospital, I have been taking several different kinds of medicine as treatment for my claimed stomach trouble. I have been taking them off and on right along. I started [78] taking several different kinds of medicine several years ago. The several different kinds of medicine that I have taken are salts and mineral oil and pills. I remember when this case was tried about a year ago down here. I remember that I testified as a witness at that time. I do not remember if at that time the following question was asked me and I made the following answer: "Q. Have you taken any treatments for stomach troubles since you left Fort Desmoines? A. Yes." I could not remember whether this question was asked me, "When?" and to which I answered, "I have been taking that off and on about once a month." I do not remember now if this question was asked me, "And what is the treatment?" to which I answered, "Salts." I would not say that I did not make that answer, and I would not say that I did make it. I do not remember that I testified a year ago that I had been taking mineral oil in addition to salts. I have not taken that medicine under any doctor's advice. I have been taking it by my own advice. Since August 13, 1919, when I was discharged from the army, I have been going in to Dr. Claiborn several times and getting pills from him for my stomach trouble. I went in to him several different times. I don't remember

(Testimony of Theodore Thompson.)

now when I first went in to him. I went in to him more than a year ago. I did not go in as a patient of his; I just asked him if he had some pills, as my stomach was in bad shape. He was treating me for stomach trouble more than a year ago. He gave me some pills to take home. I don't remember if a year ago, when I was a witness here, this question was asked me, referring to the time since I [79] was discharged from the army: "You have taken no medical advice and have had no medical attention, have you?" And I do not remember if I answered that question, "No, sir." I do not know and can't remember whether or not, at the time of the former trial I said that I had consulted Dr. Claiborn and he had treated me for this stomach condition. I believe I went to Dr. Baskett once, seeking advice and treatment for my stomach trouble, since my discharge from the army, in addition to Dr. Claiborn; but I am not quite sure. Other than Dr. Claiborn and Dr. Baskett, I have gone to Dr. Hill, at Big Timber. He gave me some pills for my stomach. That was about two or three months ago. I do not believe I went to any other doctors than those. I did not go to any other doctor, as I remember.

I never did go to any doctor to have my right leg treated. I never did go to any doctor to have my nervousness treated. I knew that the Government has maintained Fort Harrison, near Helena, for the accommodation of soldiers that were sick or injured. I don't remember if I have or have not

(Testimony of Theodore Thompson.)

ever asked the Government to admit me into Fort Harrison to give me treatment for my stomach condition or any other condition that I claimed I had. I don't remember if I ever asked them or not, and I don't remember now at all if I ever wrote them about it. I never did go there to receive any treatment, since my discharge from the army. I have stated that I have never requested, or don't remember whether or not. I did ask the Government to take me into Fort Harrison and give me treatment; and I [80] never went there.

I do not remember that in about July of 1924, the Government sent me transportation and requested me to go into the hospital and I refused to go for treatment. I would not say that that did not happen, and I would not say that it did happen, because I don't remember. The signature on Defendant's Exhibit 17, which I am shown, is my signature, "Theodore Thompson." I must have signed that, if it has my signature on it.

Mr. BROWN: We offer in evidence the Government's Exhibit 17.

Mr. MOLUMBY: No objection.

The COURT: It will be received in evidence.

(Testimony of Theodore Thompson.)

DEFENDANT'S EXHIBIT 17.

Grey Cliff, Montana,
July 19th, 1924.

Mr. T. C. Busha, Jr.,
Helena, Mont.

Dear Sir:

I am returning herewith railroad transportation and other papers you sent me to admit me to the hospital at Helena, for the reason that I can not possibly leave my ranch at this time since I can not hire any one to take care of it for me. I wish to go later on however and I shall advise you as soon as I can make arrangements to leave here.

Yours very truly,

THEODORE THOMPSON. [81]

(Stamped upon the face of Defendant's Exhibit 17 are the following:) "Medical Section, Date 7-22-24. File V.H.R." "Transportation Jul 23 1924 File." "Received Jul 22 1924 Sub-District Office, Helena, Montana."

After having heard that letter read, it does not refresh my memory as to whether I did refuse to go to the hospital at that time and sent the transportation back. I can't remember it. I state in the letter, "I wish to go later on, however, and I shall advise you as soon as I can make arrangements to leave here." I do not remember that I ever did write them or advise them that I was ready to go

(Testimony of Theodore Thompson.)

to the hospital after this letter. That is my signature on the bottom of the letter, marked "Defendant's Exhibit Number 18," which is handed me, addressed to Mr. Theodore Thompson, Grey Cliff, Montana.

Mr. BROWN: We offer Defendant's Exhibit 18 in evidence.

Mr. MOLUMBY: No objection.

The COURT: It will be received in evidence.

DEFENDANT'S EXHIBIT 18.

United States Veterans Bureau

Helena, Mont.

Oct. 7, 1926.

Office of Regional Manager.

This Letter Refers to Your File Number:

In reply refer to: HM-1. C-278 440 [82]

Mr. Theodore Thompson,
Grey Cliff, Montana.

Dear Sir:

This office is in receipt of a communication from Dr. Claiborn of Big Timber, informing us that you are in need of hospital treatment. If you will notify us as to the time you will be ready to come to Helena for this treatment, hospital admission card and transportation will be forwarded to you for this purpose.

By direction

A. N. J. DOLAN,

Regional Medical Officer,
Helena Regional Office.

(Testimony of Theodore Thompson.)

U. S. Veterans Bureau,
Helena, Montana.

Gentleman:

Regarding my coming to the hospital for treatment, will say that I am trying to make final proof on my homestead, and it will be coming up November 29th, and as I am in no worse condition than I have been for months, I would prefer to wait till after that time, however if you insist I will try to come up now, with the understanding that I be allowed to return by that time.

Sincerely,

THEODORE THOMPSON.

(Stamped upon the face of said exhibit appear the following:) "Regional Office. U.S.V.B. Helena, Mont. Nov. 6, 1926," and "Medical Section. Nov. 8, 1926. File." [83]

I have testified that I went to Bozeman to take vocational training. I was given vocational training, or offered vocational training by the Government in agriculture. I could not say now if I did or did not ask the Government to train me in that course or line; but that is what they were giving me. I don't remember whether I did or did not make an application to the Government to be permitted to go to school to learn something. That is my signature, "Theodore Thompson," upon Defendant's Exhibit 9, which is shown to me and dated September 10, 1919. I signed that, addressed

(Testimony of Theodore Thompson.)

to the Federal Board for Vocational Education, Division of Rehabilitation. When I was asked here, "What is your trade or occupation?" and I answered, "Farmer," I do not know if that is a truthful answer or not. Sometimes it is spelled as farmers and sometimes it is spelled as ranchers. They asked me how long I had worked at it, and I said "About 15 years," and that is true. I had worked at it all my life. I say here, "I would like to learn some trade or calling by which I may earn my living." I would not say that I did not say that to the Government. It might have been true that I wanted to learn some trade or calling by which I could earn my living at that time; but I don't know, I couldn't say whether I did or did not.

Q. Well, did they ask you what other kind of work you could do, and you said "None"? Was that true, that you couldn't do anything except farming?

A. I wasn't farming.

I couldn't do that either. I do not know if [84] they asked me at that time, "What work do you think you could do if you were given training?" and I answered, "Crop Inspector—Meat inspector or some work of similar kind." I do not know if that was true or not. I could not say I could and I could not say I could not do that work if given training.

Mr. BROWN: We offer in evidence, if the Court please, the Defendant's Exhibit 9.

Mr. MOLUMBY: No objection.

The COURT: It will be received.

(Testimony of Theodore Thompson.)

DEFENDANT'S EXHIBIT 9.

Federal Board for Vocational Education
Division of Rehabilitation.

D. V. O. No. 10-8914.

Inquiry concerning soldier or sailor discharged from service.

Name, Thompson, Theodore. Age, 26 yrs. Race, White. Permanent mailing address, Grey Cliff, Montana. If you change your address notify us at once of new address. Where can you be reached by telegraph? Grey Cliff, Montana. Name and address of nearest relative or friend, (In United States) Carl Bue, a cousin. (In Norway) Karl Thompson and Anna Thompson, father and mother.

2. Where did you join the service? Big Timber, Mont. and Camp Lewis, Wash. Date of discharge, Aug. 13, 1919. Rank or rating, Private, 1st Cl. Organization, *Do. D.*, 347th M. G. Bn. How much base pay did you get for your last month in service? \$33.00. [85]

3. Are you single? Yes. Married? No. Widowed? No. Divorced? No.

4. Who is dependent on you (wife, number of children, etc.)? My parents are dependent on me, to work their farm & support them. How much did you allot them? \$300.00 before entering the service.

5. Have you applied to the War Risk Insurance Bureau for compensation? Yes. Have you received

(Testimony of Theodore Thompson.)

any compensation from the War Risk Insurance Bureau? No. If so, give date of beginning and amount per month. None.

6. What is your disability? Lost the lower third of my left leg.

What is your present physical condition? Otherwise in good health.

7. How far did you go in grade school? 8th grade. In high school? None.

8. What other schooling have you had, such as college, army or navy school, night school, correspondence school, etc.? (Answer fully.) None but service in army.

9. Can you read newspapers in English? Yes. Can you write a letter in English? Yes. In what other language can you read or write? Norwegian.

10. What is your trade or occupation? Farmer. How long have you worked at it? About 15 years. What other kinds of work have you done? None.

11. What has your father's occupation been? Farmer.

12. What have you been doing since discharge (resting, attending school, working, etc.)? Nothing but taking [86] life easy.—No work.

13. If at work, what are you doing? None. What are your present wages? None.

14. What is your present employer's name? No employer. What is his address?.....

15. Are you satisfied with the kind of work you are now doing? No.

(Testimony of Theodore Thompson.)

If not, why? I *would to* learn some trade or calling by which I may earn my living.

16. What other kind of work can you do? None.

17. What work do you think you could do if you were given training? Crop Inspector—Meat Inspector—or some work of similar kind.

First choice. Crop inspector.

Second choice. Meat inspector.

18. Remarks: (Give here any information relating to your present condition, prospects, and occupational preference that you think will be of interest.) Well, I have a dry land homestead on which I filed just before entering the Army in 1917. Derive no income from it as it is not improved. I have no income of any kind and can not do manual labor on a farm. I would like school training that would fit me for a government crop inspector, or a government Meat Inspector.

Your Signature,

THEODORE THOMPSON.

Date, Sept. 10th, 1919.

(Stamped on the face of said exhibit is the following):

“Received Sep 13 1919 Federal Board for Vocational [87] Education. D. V. O. #10.”

I went to Bozeman to take vocational training in the month of January, 1920. I stayed there about three months, leaving some time in March in the

(Testimony of Theodore Thompson.)

early part. I left Bozeman and refused to permit the Government to train me because I could not learn anything, and I was also nervous and I couldn't learn, and I couldn't learn the language. There was nothing wrong with my mind at that time. I said I got disgusted. I tried for a little less than three months and got disgusted and quit and went home. They were training me along agricultural lines, training me to judge stock and lectures and taking machinery apart. It was machinery that is commonly used on a farm, farm machinery. They were training me how to take care of that and how to operate it. It looked to me like they were going to train me how to raise crops and how to run a farm and how to manage a farm, and how to direct the work of farming to be done, as I understand. I quit in less than three months and went home. I went to Carl Bue's place to stay. I asked the Government to give me some training in reading and writing in the English language, and they did not refuse to do that. As far as I know, they did not refuse. But I wouldn't let them do that. They tried it with me and I couldn't learn, because I didn't have the ambition to learn.

At that time the Government was paying me a hundred dollars a month, and they paid me a hundred dollars [88] a month all the time I was at Bozeman while they were trying to teach me. And I knew that they were going to continue to pay

(Testimony of Theodore Thompson.)

me a hundred dollars a month as long as I was in Bozeman taking training. I don't remember now if I did or did not leave that training voluntarily, of my own free will. I signed Defendant's Exhibit 1, which is handed me, and that is my signature, "Theodore Thompson." I could not say whether or not the answers to those questions are written in my own handwriting. I do not know and could not say whether I did or did not write them myself.

Mr. BROWN: We offer the Defendant's Exhibit 1 in evidence.

Mr. MOLUMBY: No objection.

The COURT: It may be received.

DEFENDANT'S EXHIBIT 1.

Federal Board for Vocational Education
Division of Rehabilitation
District No. 10

Minneapolis, Minn.

Theo Thompson

Training Information.

1. Why are you discontinuing training? I am going back on farm.
2. Do you wish to apply later to have your training resumed? If so, when? Yes. October.

Placement Information.

1. What are you going to do after discontinuing training? Farming. [89]

(Testimony of Theodore Thompson.)

2. Who will be your employer? Myself.
3. Just what will your job be? Farming.
4. What will your wages be? I don't know.
5. What will your address be? Grey Cliff, Mont.

We thank you in advance for the above information which will aid us in completing our records.

Yours truly,

C. A. ZUPPANN,

District Vocational Officer.

(Written on the back of Defendant's Exhibit 1 is the following):

I wish it to be understood that I am discontinuing training voluntarily & am going back to a compensation status in preference to a training status.

THEO THOMPSON.

The Government was paying me compensation when I left vocational training at Bozeman. They ask me there, "Do you wish to apply later to have your training resumed, and if so, when?" and I wrote there, "Yes, October." I do not remember, and could not say if I intended to go back to Bozeman in October. I could not say now whether that was a truthful answer I gave the Government or not. I never did go back in October. I could not remember whether I ever requested the Government to give me any further vocational training.

I signed that name, "Theodore Thompson," on

(Testimony of Theodore Thompson.)

the Defendant's Exhibit 19, dated August 12, 1919, to the Federal Board for Vocational Education, and which is shown to me. That is my signature. I do not know if, when they were asking me regarding my knowledge of languages and the English language, I said that I understood the English language well. I guess I must have answered that I spoke the English language well and read the English language well on that date, August 12, 1919. I said that I wrote the English language a little. And back here, where they were telling me about the courses that they would give me, it states: "Specific occupation recommended by Vocational Adviser or Special Agent. Operating own farm, with a better knowledge of stock raising. His reasons. Owns 320 acres, and the education desired will be of advantage in carry on." I do not know and could not say if that was true that I had 320 acres at that time. It is true that I had a homestead in August of 1919. It also states: "Suggestions, if any, regarding arrangements for training. A supplementary course in English—reading, writing and arithmetic might be arranged to advantage, prior to taking up the course in Animal Husbandry." I did not know that if I wanted it that they were offering me there a course in English and reading and writing and arithmetic before I took up my training.

Mr. BROWN: We offer Defendant's Exhibit 19 in evidence.

The COURT: How old was the plaintiff at that time; 26? [91]

(Testimony of Theodore Thompson.)

Mr. MOLUMBY: Yes, the plaintiff was 26, I think, Your Honor. No objection.

The COURT: It may be received.

DEFENDANT'S EXHIBIT 19.

Federal Board for Vocational Education
Division of Rehabilitation.
Survey.

Transferred to D. V. O. No. 13 D.

Source of Case. USA. Gen. Hos. #26, Ft. Des M, Ia.

1. Name, Thompson, Theodore. Serial No. 2255553. Age, 26. Race, Wh. Rank or rating, Pvt. 1/cl. Organization. 1. Org. from which dischg. Co. D, 347 MG Bn. 2. Other Org. in which he served..... Entered service 9/19, 1917. Place. Big Timber, Mont. Dischg. 8/13, 1919. Place, Ft. Des M. Ia. Character of discharge: Hon. X, Ordinary....., Dishon. From draft....., Other, CDD Form 535 att. P. O. address after discharge, Grey Cliff, Sweetgrass County, Montana. Home address, Same. Birthplace, Norway. Years in U. S., 7. Nationality of father, Norw. Occupation of father, Farmer. Single, married, widowed or divorced, Single. Number and status of dependents, None.

2. Disability (information obtained from statement of man): Date of occurrence, Oct. 31, 1918. Place of occurrence, Belgium. Nature, Shrapnel wound, severe, to left knee. Time in hospital, 40

(Testimony of Theodore Thompson.)

weeks. Per cent [92] disability, 2/5. (Army or Navy rating.) In line of duty? Yes.

3. Educational history:

	No. of years.	Grade reached.	Did he graduate?	Type of school, as public, private, parochial, etc.
(a) Elementary	8	8th	Yes.	Public schools of Norway.
(b) High or secondary	Never had any schooling in the U. S.			
(c) Trade, agricultural, commercial,				
(d) Night or correspondence				
(e) College				

Age on leaving school, 15. Reason for leaving school, work.

Major subjects studied in.....

Years of military service, 2. Years of vocational experience, 9.

	Time spent.	Subjects studied and proficience in each.
(f) Army, Navy or Marine schools	None	
(g) Hospital schools	6 Months.	English—spelling, reading and writing.

Any other education, None.

(Testimony of Theodore Thompson.)

Knowledge of languages:

	Under-stands—	Speaks—	Reads—	Writes.
English ("well," "a little," etc.)	Well	Well	Well	A little.
Other language, Norwegian.	Well	Well	Well	Well.

4. Vocational history (list occupations in sequence): [93]

(a) Occupations prior to service.....

(1) Just what did he do? Farming. Name and address of employer. For himself—took up homestead. No. of years, 5. Approximate dates, From 1912 to 1917. Wages, Amount.....

(2) Farmed in Norway until leaving there to settle in US.

(b) Occupation during service, Line duty.

(c) Occupation after leaving service.....

(d) Principal civil occupation, Farming.

5. W. R. I. *dots*:

(a) Compensation claim forwarded to Washington, Aug. 13, 1919. Compensation awarded.....

(b) Amount base pay last month of service, \$33
Date of birth, July 31/93.

(c) Memoranda.....

Next of kin's, or nearest friend's name, (Father) Carl Thompson. Address, Evrebow, Norway—
(Cousin) Carl Bue, Greycliffe, Mont.

6. Specific placement information: Is the man now employed? No.

(Testimony of Theodore Thompson.)

If employed, state whether suitably or unsuitably

.....
 If unemployed, what assurances or prospects has he? He has a homestead of 320 acres in Sweet-grass County, Mont. He will return home, and look around there, then when course is ready, be able to go to school.

(a) If employed or has definite prospects of employment, give the following information relative thereto:

(All blanks unfilled. Omitted from exhibit.) [94]

(b) If man is unemployed or unsuitably employed, and has no prospects of employment, give position desired or suitable for him:

(All blanks unfilled. Omitted from exhibit.)

7. Man's preference for future occupation (after receiving training):

(a) First preference, Agriculture—Animal Husbandry. Reason for it, Never done anything but farm—have place of own—want to know more of stock raising.

(b) Second preference. None. Reason for it. Don't think anything else would be as suitable.

8. Economic status.....

Bank account, None.

Credit, None.

Income, Unknown—none for two years at least.

Property, 320 acres homestead in Montana \$4000.

Financial backing, None.

(Testimony of Theodore Thompson.)

Interviewed at Ft. Des Moines, Ia. on Aug. 12, 1919.

THEODORE THOMPSON,

(Signature of man certifying to the correctness of his statements as set down above.)

9. Personal characteristics, etc.:

(a) (1) Recreations, Movies, baseball, racing.

(2) Hobbies, None.

(3) Favorite reading, Western stories; daily papers.

(4) Smoke, Yes. (5) Drink, No.

(b) (1) Personal appearance, Neat. (2) Manner, Pleasant.

(c) Sociability: Unfriendly, No. Social.....
Very social..... [95]

10. (a) Specific occupation (after receiving training) recommended by Vocational Adviser or Special Agent. Operating own farm, with a better knowledge of stock raising.

His reasons. Owns 320 acres, and with the education desired will be of advantage in carry on.

(b) Suggestions, if any, regarding arrangements for training. A supplementary course in English—reading, writing and arithmetic might be arranged to advantage, prior to taking up the course in Animal Husbandry.

(c) Is a position available for man after training? If so, give full particulars as to nature and location

(d) If no definite position is in view, is Vocational Adviser satisfied that prospects for employ-

(Testimony of Theodore Thompson.)

ment are good? Yes. Give reasons. Owns own farm.

WM. C. MUNSON

(Signature of Interviewer.)

Spl. Agt. Dist. #9.

Date Aug. 12, 1919.

11. Recommendation of Supervisor of Advise-
ment: Agri. O. K.

JOHN B. BUTLER

(Signature of Supervisor of Advise-
ment.)

Date Nov. 1, 1919.

(Stamped on face of above exhibit the following:) "Received Aug 18, 1919, Federal Board for Vocational Education. D. V. O. #9." and "Received Sep 4 1919. Federal [96] Board for Vocational Education. D. V. O. #10."

When I left Bozeman, I went to Mr. Bue's place. I do not remember how long I stayed there. I stayed there about a month. From there I went to Mr. Myrstol's place. I stayed there about a year, I would judge. That is a farm or ranch. I did not rent that place and did not farm it. There was someone living there with me. Off and on there was a fellow came to stay with me. I did not pay this man for staying with me. He was just staying with me for a place for him to live off and on. He was not doing any work for me. Reed Point was the closest town to this ranch. It was about six miles

(Testimony of Theodore Thompson.)

to Reed Point. During that year Mr. Myrstol came around off and on and hooked up a team and went to town and bought some groceries. I got the money to pay for the groceries from the compensation that the Government was paying me. I do not remember how much compensation they paid me during that year. They did not pay me as much as seventy-five dollars a month. I do not think it was that much. As to whether it was as much as sixty dollars; I could not remember now how much it was.

After I left that place, I moved up on my homestead, of 320 acres. That was in 1921 that I moved up there, I think. I had a team or horses on my homestead at that time. I had had four horses on my homestead when I went to the army. That is all the stock I had. I had this homestead of 320 acres that was not proved up on. It was dry land, with no water on any part of it. I do not remember just [97] what year it was that I commenced proving up on this homestead. I do not remember if I did or did not have it proved up on in 1921 when I went there. I did not have to do any work to prove up on the homestead. The improvements upon the land when I proved up were a house and barn, and I do not remember now if it was fenced or not. I believe it was, but I could not say for sure. I built the house before I went to the army, and I built the barn before I went to the army. I did not farm that land in 1921 when I went there. I never did farm that land. I do not remember how long I lived on that land without farming it. I do

(Testimony of Theodore Thompson.)

not believe I lived there until I sold it. As to whether I lived there as long as two years; I could not remember now how long I did live there. It might have been six months and might have been one year or two years, I don't remember. There was someone living with me there then. I was not exactly hiring someone to live there with me then. A man named Hans Omdal lived there with me. He lived there with me part of the time. When I say "part of the time," I mean he would be out to work for a week and then he would come back and stay with me for a week. I did not pay him any wages while he was there. He was just living there. I boarded him. I don't remember whether he bought any groceries for himself or not. I bought groceries, but I don't remember whether he bought any groceries or not; I couldn't say. Mr. Omdal took care of the horses while I was there. During those weeks he was away, the horses were just out in the hills, and nobody took care of them. [98]

From my homestead I went over to a place which Mr. Terland had. I stayed there about a year and a half or two years. I did not farm that place. I just lived there. I could not remember now what years I lived there nor what year I moved there. I think I left that Terland place in 1924, but I am not quite sure. I never did any farming while I was there. While I was there my horses were in the pasture in the hills, outside the place that I was on. Nobody was taking care of them. I did not rent the place; I was just staying there. Hans

(Testimony of Theodore Thompson.)

Omdal was staying with me there. I did not pay him for staying with me. He did not stay with me all the time I was there. He was out part of the time and then he came back. He would be out to work a week and then he would come back and stay a week. I do not know if he stayed with me all together as much as two thirds of the time that I was there. I don't remember whether he was there that much or not. While he was away, I took care of myself. I managed to get around and cook me something to eat. There was water just outside the house and I had to carry water. I carried it in a bucket. I had to carry what wood I needed. If he was not there, I had to take care of whatever house work there was to be done. I paid this man no wages for taking care of me and staying there. I was getting money from the Government to live on. I do not remember how much they were paying me then. I could not remember if they were paying me as much as seventy-five dollars a month. They were paying me enough to live on. [99]

I moved from my homestead down to this other place because my homestead was way out in the hills and it was rough to get in and out. That is the only reason I had for moving. During that time I did not move into town where I would be close to a doctor to get medical attention, if I needed it, because of my nervous condition. I could not live in town. I could not live in Grey Cliff or Big Timber.

After I left this place, I bought me another place of 320 acres, for which I paid \$2500.00. That is

(Testimony of Theodore Thompson.)

the money which I say I borrowed from Carl Bue. I then had this 320 acres, and my homestead of 320 acres; 640 acres which I had and owned. As near as I can remember, I think it was in 1924 that I bought this 320 acres, in the Spring of the year. There was a little irrigable land and a little dry land, both, on this 320 acres. I could not just tell you how much irrigable land there, but there is 40 acres under cultivation. There was 40 acres under cultivation when I bought it; the rest of the 320 acres, which is pasture land, was not in cultivation. No crops were sowed to that 40 acres that was in cultivation, except a hay crop. When I bought that land I did not expect to harvest the hay crop, and I did not expect to harvest the hay crop when I lived there. I did not expect to farm the place when I bought it. I borrowed \$2500.00 to buy a ranch that I did not expect to farm or use, because I wanted a home. That is what I wanted it for. I had a home on my homestead that the Government had given me, but that was way out in the hills [100] and inconvenient to get in and out. There was a road to it which you can call a cow trail. I was buying this 320 acres as a home, and I did not intend to farm it at all. I am still living on that 320 acres and have never farmed it. I have never raised any grain crop off of it. I have raised a hay crop on it, ever since I bought it. I don't know when I changed my mind after I got on there and commenced raising hay. I just raised hay, that's all. There is only forty acres under cultivation now. I

(Testimony of Theodore Thompson.)

have not increased the acreage at all. I have been hiring the work done around the place, from the time that I went on there. I have hired a different number of men. In haying time, it requires more men. I hire as many as six men in haying. The length of time which I keep six men during the haying depends on how much hay there is. This year I only got a little crop of hay. In 1935 it was a little, small crop; I do not know how many tons, I did not measure it. I do not know from now until 1924 how much hay I raised on that place. I never measured it at any time, and I can't give any estimate as to how much it is. I probably have raised as much as 75 tons at one time on the place. I do not believe I have ever raised as much as a hundred tons of hay.

Q. Well, with your six men haying, how long would it take them to put up a hundred tons or seventy-five tons of hay?

A. Well, sometimes took them longer than others.

As near as I can remember, the longest time that I have been known to be there putting up my hay would [101] be about two weeks, or three weeks. I have been paying men two dollars a day and sometimes two and a half, and sometimes three; from two to three dollars a day, to about six men. They have all been getting from two to three dollars a day during different years.

I keep one man on the place, mostly, the year around. I have been paying him different wages,

(Testimony of Theodore Thompson.)

according to the way the wages run. I could not remember now how much I paid my one man in 1924, when I went on the place. In 1925, I paid that one man the year around about thirty-five dollars a month. I paid him by the month. I kept at least one man the year around that I paid thirty-five dollars a month approximately. The name of the man that I now pay thirty-five dollars a month and keep the year around is Mandius Thompson.

I have not done any work around the farm, excepting just feeding a few chickens and picking eggs off and on. But I have done that. My hired man has been doing the most of the chores around the farm. I have been doing the chores off and on since I have been there, but not all of the time. I have hired someone to do them.

Q. Nothing wrong with your arms; you have no trouble with your arms?

A. The arms can't get around to do it all.

I have no trouble with my back that I know of. Sometimes I do the cooking for this one man and sometimes he cooks himself. I do not take care of the house. Sometimes I sweep out a little bit in the house and sometimes he does. I do not do the most of it. As to whether I [102] hire a man to do the cooking and sweep out the place; he would cook off and on, and he was working outside.

I do not remember now what year I commenced to accumulate my stock, my herd of cattle. I do not know when I started my herd. I started my herd with two cattle, and I have forty head now.

(Testimony of Theodore Thompson.)

I do not know how long I have had forty head. I have sold off a few calves and steers out of the herd, in these various years. I own 640 acres of land now. I have 749 acres assessed to me now. I got one hundred twenty acres additional homestead; so now I own 749 acres and a herd of cattle. I do not know how many horses I own.

I tell these men that do the work on the farm what they are to do. I am able to do that. I can tell them what I wish to have done. I direct all the work, on the ranch, of the hired man. I tell him what to do and how to put in the crop. I do not see that he does it. I cannot always be there to see if he does it; but I know in a general way how he is doing the work around the farm. I have been and am able to do all of that. I have been doing that ever since I bought this 320 acres of land, and have been telling them what to do and how to do it. And that is true whether I have had one man working for me or six men. When I have six men, I tell all six men what to do. I did not own 320 acres of land personally when I went into the army. I had filed on 320 acres when I went into the army. I do not know and could not say how much crops I made out of my farm in 1924. I did not make any money [103] in 1924 from my farming operations. I do not know how much I lost. I know that I must have lost money. I could not say if I have or have not made any money off of my farm from 1924, when I started farming, up until the present time. I know some years I have lost money. I do not

(Testimony of Theodore Thompson.)

remember of any years that I made money. But I have farmed it each year since 1924.

I had a house built on this 320 acres that I spoke of buying. It is a log house; an ordinary house. I paid for that. I paid for the labor of building it. I had my brother build the barn that is on the place. The barn is worth six or seven hundred dollars, and the house is worth eight or nine hundred dollars, I would judge. That is all paid for. I fenced some of the place, but I could not say how much I did fence. I have not fenced it all since I have been there. The most of the 740 acres that I own is fenced, but not quite all; because there was an old fence in on it before. I have paid for that fence that I put in. I do not know how much I paid for that.

All during those years the Government has paid me compensation. It has paid me \$99.00. That is what the Government is paying me now, at the present time. I could not say how long they have been paying me \$99.00. As a matter of fact, instead of \$99.00, I am getting \$106.00 with my insurance premiums deducted by the Government, and that is the \$5000.00 policy that I got in 1921. I could not say how long they have been paying me that \$106.00. I know now that the amount of compensation that the Govern- [104] ment has paid me since I was discharged from the army totals more than fifteen thousand dollars to date. I know that to be a fact.

In addition to my cattle, I have got a few pet sheep, ten or twelve. I also have a few chickens and

(Testimony of Theodore Thompson.)

in the neighborhood of 44 head of cattle. I have a Pontiac automobile, which I drive myself; but I don't drive it at the present time. I also have a Chevrolet truck.

(Adjournment to June 24, 1936)

I do not remember if I was asked the following question and made the following answer when I was a witness on the former trial of this cause on the 3rd of April, 1935: "Q. Now, with reference to your stomach condition, you told me yesterday that you had never received any treatment or consulted any doctor because of that since you left Fort Des Moines, after your discharge, August 13, 1919?

A. No, sir." I could not say and could not remember if the next question and my answer thereto were as follows: "Q. You haven't consulted anyone since then about stomach conditions, have you? A. No, sir." It seems to me like the following question was asked at that time and answered as follows: "Q. And you also stated, I believe, yesterday that the only treatment you have ever taken of any kind since you were discharged from the army on August 13, 1919, was, with reference to a stomach condition, that you took salts about once a month? A. Yes, sir." [105]

I signed the Defendant's Exhibit 20, which I am shown. That is my signature, "Theodore Thompson.

Mr. BROWN: We offer in evidence Defendant's Exhibit 20.

Mr. MOLUMBY: No objection.

The COURT: It may be received in evidence.

(Testimony of Theodore Thompson.)

DEFENDANT'S EXHIBIT 20.

Veterans Administration

Fort Harrison, Montana Facility.

June 2, 1934.

In reply refer to: HM-2

C 278 440

Mr. Theodore Thompson,
Reed Point, Montana.

Dear Sir:

Receipt is acknowledged of your artificial limb and the same has been inspected. It is not deemed advisable to repair this limb only for emergency use.

It is thought best at this time that arrangements be made to send you to Minneapolis for the fitting of a new artificial limb. At the same time repairs will be made for this limb if you can get along without the same. Will you please notify this office if you have one which you can use at this time for emergency purposes. Authority has been requested from Washington to send you to Minneapolis, and as soon as a reply is received you will be notified.

[106]

By direction,

L. E. BRISCOE, M. D.

Outpatient Medical Officer
Fort Harrison, Montana.

(Testimony of Theodore Thompson.)

(Written upon the bottom of above is the following:)

June 6, 1934.

Manager U. S. Veterans Bureau,
Fort Harrison, Montana.

Dear Sir:

Replying to above, will say that I now have an old leg which I can get by with for a short, however, I would appreciate your having the one I sent in repaired as I have depended on it and the old one I am now using is liable to go at any time.

As to going in being fitted for a new leg, it would be very hard at this time for me to get away and I would much prefer not to go until much later, say around October first.

THEODORE THOMPSON.

As to why it was hard for me to leave when I wrote this letter; the only thing I could say was hard for me to get away was on account of the heat. It is awful hard for me to travel in hot weather. It was hot in June.

Q. You thought it would be hot until October?

A. Hot weather, then it is hard for me to travel around in hot weather. [107]

As to whether it is a fact that the reason that I did not want to go then was because that was the busy time with my farming operations and I

(Testimony of Theodore Thompson.)

did not want to leave my farm and farming operations; I don't know that that had anything to do with it, because I had a man to do the farming. The farming operations were all over in October.

I have machinery on my farm. I have mowers and a rake and plow and harrow, the ordinary farm machinery. I bought it and paid for it. As to what it was worth when I bought it; it runs in all prices. Some of it was new and some of it was second hand when I bought it. My mowing machine was not new. One mowing machine cost me \$40.00 and another mowing machine cost me about twenty-five or thirty dollars. My rake cost me \$60.00. I do not know now what my plow cost. I bought that after the war, but I don't remember what that was worth. My harrow cost me about \$10.00. I have harness, of course, for my horses; and I built a ditch to carry water to irrigate my land with. I do not know and could not say how long that ditch is. It is not as long as three miles. I could not give the exact cost of it right now. I had one man working part of the time, practically all the time, for two months, and for about one month I had two men. I was paying those men two dollars a day. I could not say what is the value of the irrigated portion of my land per acre. I do not know if it is worth fifty dollars an acre. I do not know what the Assessor assesses it at. If it is assessed at \$100.00 an acre, I could not say whether that is the value of it. [108] I could not say that that is not the fact, because I do not know.

(Testimony of Theodore Thompson.)

Redirect Examination
of Theodore Thompson by Mr. Molumby.

If I could get ten dollars an acre, I would sell it. I would sell it for five. As to this ditch, I did not build any ditches. All the work done on that ditch was done by hired help. I got the money to pay them from compensation. As to whether or not my ranch at any time has brought enough return to pay for my running expenses; I have had to use my compensation to get by. I would not have been able at any time any year to have run my ranch without the compensation I have been getting from the Government.

Defendant's Exhibit 9, which is shown me, and which I testified bears my signature, is made out in the handwriting of somebody else. That is not my handwriting. According to the date that it bears, it was apparently made out on September 10, 1919. I do not recall now where I was at that time. If that was a month after my discharge, I was living at Bue's. I do not recognize the handwriting.

I could not say in whose handwriting Defendant's Exhibit 7 is made out, which exhibit is shown to me. It is a fact that a portion of that is made out in longhand and a portion of it is made out in typewriting. This instrument bears date August 13, 1919, which is the date on which I was discharged from the army. I recall making out papers [109] of this kind before I was discharged or at the time I was discharged. I could not say and do

(Testimony of Theodore Thompson.)

not know whether this typewritten portion was in the paper when I signed it. That handwriting is not mine.

Defendant's Exhibit 10, which is shown me, appears to have been made out on July 6, 1921. I note that that is made out by typewriting and bears my signature, and on the back are notations made by Dr. Baskett in longhand. I did not make out that portion which appears in typewriting. I do not know and could not say if Dr. Baskett filled this form out at that time. I know I did not fill it out. There is not any of that exhibit appearing in my handwriting, except my signature.

Defendant's Exhibit 5 is shown me, which is made out in typewriting and bears date December 18, 1919, and has my signature thereon. I did not typewrite that letter. I do not know who wrote it. That is also true of Exhibit 17, which appears to be in typewriting, bearing date July 19, 1924. I did not write that letter. Exhibit 18 is shown me, which appears to be a letter from the United States Veteran's Bureau, on which there is typewritten a reply without date. I did not typewrite that reply.

Defendant's Exhibit 19 is shown me, which appears to be a form bearing date August 12, 1919, which was the day before my discharge from the army. I did not fill out that form.

At various times when I was examined by Government doctors, I told them about my stomach condition. [110] I am acquainted with Dr. Claiborn. I

(Testimony of Theodore Thompson.)

reckon he is a Government doctor. I informed him of my stomach condition. He has not been giving me treatment for it. I have been going to him to get some medicine for it, pills and so forth, off and on. That has been going on for a number of years. I am also acquainted with Dr. Baskett. He is not a Government examining doctor. I also received treatment from Dr. Baskett. Whenever I have been called in for examination I have told other Government doctors about this stomach condition. I recall Dr. Moore. I informed him of it. That was as far back as 1920. I do not recall Dr. Greene in Livingston. I could not remember his name, but I was called up there for examination, to Livingston. I informed him of my stomach trouble. On each occasion that I was called in to the Veterans Bureau at Helena, I informed the doctors who examined me there of my stomach trouble. I informed them concerning my trouble with my knee on my good leg, the one which I have left. I am not married now, and never have been married.

One of the exhibits speaks of some minor injuries to my face, and I stated it made a scar along my eye. A piece of shrapnel caused that scar along my eye. I got that piece of shrapnel at the time I had my leg blown off.

At the time I went into the army, or prior to the time I went into the army, I filed on 320 acres of land as a homestead, as near as I remember. I have

(Testimony of Theodore Thompson.)

spoken of an additional homestead of 120 acres. I believe I filed [111] on that after I came back from the army. The original filing and my additional filing was under the grazing act. The land was not fit for anything except grazing. When I sold the homestead to Carl Bue, I did not sell all of it to him. I retained 120 acres, which is my additional homestead. I do not remember now if I had to put any improvements on that additional entry when I proved up, or whether I proved up on the improvements that I had placed on my original homestead. I did put some improvements on the addition. I put a fence on it. I did not put anything on it outside of the fence. I did not do the fencing myself. I still have that 120 acres of land. I do not know what that land would be worth at the present time; about a dollar an acre.

That land that I purchased, and on which I live, consists of 320 acres. A part of that is also grazing land. About 40 acres of it is not. That forty acres is in hay. I cannot raise successfully, up in that country, any other crop than hay. The whole ranch is of the type of grazing land. I stated that I would be glad to sell it at five dollars an acre. I do not know what I could get for it. I am satisfied that I could not get more than five dollars an acre.

I stated that I bought 320 acres of this land at a different time. I paid \$900.00 for that 320. The land has never been worth any more money than what I paid for it. As a matter of fact, I would sell it for as much now as I paid for it. I do not know if I

(Testimony of Theodore Thompson.)

could sell it for [112] that, but I would like to sell it for that. To buy this ranch I borrowed the money from my cousin. I do not know if, aside from the amount of money that I paid him back by selling him my homestead, I have paid him anything at all. I could not remember. I have not paid him anything to amount to anything. If I have paid him anything, it would be in the neighborhood of a hundred dollars. I have not been able to earn anything off of that land sufficient to pay anything on the indebtedness that I owe. There has never been any year since I got out of the army when my returns from the land were sufficient to pay for my help and maintain myself. The returns from my ranch in any year since I have been out of the army have not been sufficient so that, if I had not drawn my compensation from the Government, I could have paid the men for doing the work on the ranch.

I do not know in whose handwriting the first page of Defendant's Exhibit 1, which is handed me, is made out. I do not know in whose handwriting the second page is made out. I am sure that the handwriting is not mine. It is not my handwriting. This portion of it on the back of it reads as follows: "I wish it to be understood that I am discontinuing training voluntarily, and am going back to a compensation status in preference to the training status." I do not know what I mean by the word "status." I do not know what I mean by the word

(Testimony of Theodore Thompson.)

“voluntary.” I do not know who made that out for me. It might have been one of the professors or officers at the school which I [113] was attending at Bozeman. I do not understand what the word “discontinue” means. I do not understand what the word “preference” means. I could not remember now if I did or did not understand, when this was made out, that I was winding up my training or quitting that training.

Yesterday, in answer to a question by Mr. Brown, when I was discussing the question of my taking training in reading and writing, he asked me something about whether or not the Government offered me some training in writing and reading, and I stated that they did. I do not know if they ever did specially attempt to train me in reading and writing. I got some training at Bozeman in reading and writing. That was part of my course there, or part of the training that they were going to give me. There were others in the class. There were a lot of men in the class, a lot of born Americans there in the class. They were trying to teach me to spell the words. They gave the instruction in classes or groups. I told you yesterday that I could not take the course because I did not have the ambition.

Q. Just what did you mean by that?

Mr. BROWN: I object to that, if the Court please. That is for the jury, and it is invading the province of the jury.

(Testimony of Theodore Thompson.)

The COURT: Oh, well, it is some expression of his that he wants to explain. I will let him say what he meant [114] by it.

Mr. BROWN: Exception.

A. What I meant by it was I couldn't keep up in the class. That was my meaning of it.

I could not keep up because I was handicapped because I didn't understand the language, and I could not read and write. There were boys in that class who were born and raised in this country. I do not remember if there were any other boys who were not born and raised in the country or not. As far as I know, I was the only one that had never had any training in English. I was not in that class all during the time I was at Bozeman. They gave me that during about the last three weeks that I was there. I stated yesterday that I was disgusted when I quit training. I was disgusted because of my nervous condition and it seems like I could not much learn the language.

Q. Now Theodore, you were on the stand all day—or all yesterday afternoon. Just tell the jury how just being there on the stand has affected you?

Mr. BROWN: That is objected to as argumentative and self serving. The jury can observe that.

The COURT: Well, of course you have gone into it so thoroughly in your examination and the examination of both doctors that it seems

(Testimony of Theodore Thompson.)

to me that you are making this unnecessarily protracted. I suppose he has been in pain. He has testified himself [115] that he has been in pain ever since he was in the army.

Mr. MOLUMBY: Well, I had another matter in mind, Your Honor.

Q. With particular reference to your mental condition, or your nervous condition or your memory.

Mr. BROWN: The same objection.

The COURT: Well, I suppose he was nervous. Were you nervous on the stand here yesterday?

Mr. BROWN: Exception.

A. Yes, sir.

It has affected my memory. My normal weight before I went into the army was somewhere around 170 pounds. I do not know now just exactly what my weight was while I was in the army; but I do remember the last time I weighed myself was before I went over seas in Camp Lewis, and I weighed 190 pounds.

In answer to questions by Mr. Brown, I stated that I was able out there on the ranch to tell the men what to do and keep on overseeing or supervising. I was not able to get out and see what type of work they were doing. I very seldom go outside of the house to boss the men. If the fence is down and I find out about it, I tell the men that the

(Testimony of Theodore Thompson.)

fence is down out there some place, I don't know. I just tell them how to fix it, is all. I never go out and see what kind of a job they do. When I was called to the army, I was at Mr. Bue's ranch. I was not there when I got [116] my call to go into the army. I was up in the mountains, 110 miles south of Big Timber. I came in that 110 miles on horseback. It took me one day.

WILLIAM GEORGE RICHARDS,

a witness called in behalf of the plaintiff, being first duly sworn, upon

Direct Examination

by Mr. Molumby, testified as follows:

My name is William George Richards. I am engaged in the medical profession. I am a physician and surgeon, practicing here in Billings. I have practiced medicine since 1904.

Mr. BROWN: We admit the Doctor's qualifications as a regularly licensed and practicing physician, unless you want to further qualify him.

In the month of June, 1924, I was examining physician for the United States Veterans Bureau. I could not tell you exactly how long I was an examining physician for the United States Veterans

(Testimony of William George Richards.)

Bureau, but for some four or five years, I should think. As Examining Physician for the United States Veterans Bureau I have examined Theodore Thompson, the plaintiff; if he is the man who just left the witness stand. The instrument which is shown me, purporting to be a report of physical examination, bears my signature. That is a report of an examination that I, myself, made of Theodore Thompson. Using that report to refresh my recollection, and particularly directing attention to question number 11; we found in the first place that the man had had his leg amputated as the result of a gunshot wound. We found, also, according to this report, that his vision was reduced and also his hearing was reduced, and also he had abdominal symptoms which we interpreted as meaning that he had a colitis. By the term "colitis" is meant an inflammation of the colon, and the colon is the large gut. Persons do not sometimes speak of that as stomach trouble. If you will draw a line from the lower part of the abdomen on the right side, up as far as the middle of the abdomen, and then carry it off to the left and then from the left side of the abdomen to the bottom of the abdomen, you have the course of the colon.

As to the examination which I give a patient to determine some trouble in the colon; in the first place, you ask him what his symptoms are. And here we found that this man had dysentery in France. Dysentery is a frequent precursor of a

(Testimony of William George Richards.)

chronic condition of colitis. Then he gives his symptoms, and I have to depend upon what he tells me as his symptoms. He says he has constipation, alternated with diarrhea, with cramps in the abdomen. And those symptoms are very suggestive, even if not chronic, of colitis. Also gas on the stomach and vomiting at times. We take his word. That is his story. Then when you examine him, you find that he is tender along the course of the colon. So, if a man has had dysentery—and dysentery is bad diarrhea—which is caused by an inflammation of the gut, and especially if a man has had those dysenteries which they had in the [118] army, and then as a result of that dysentery he has abdominal symptoms with cramps and pains, and then the colon itself is tender, you are fairly safe in making a diagnosis of colitis. That tenderness is manifested in the same way that you manifest any tenderness. If I punch you in the abdomen; or not punch you, but if I feel your abdomen and push it and you feel it, that is tenderness.

It says here that my examination disclosed amputation of left leg above the knee, five inches above knee articulations. My diagnosis at that time of his condition is stated here as amputation of left leg above knee, colitis, and then appendicitis is put down with a question mark after it. My prognosis at that time, as stated here, is condition of leg permanent, abdominal condition doubtful. By the term “prognosis,” we mean what are the prospects. For

(Testimony of William George Richards.)

instance, you can easily say that as to a man who had had his leg amputated the prospect of his not growing another leg is certain. The condition of the abdomen, we say, is doubtful. The condition of the abdomen is not as certain as the condition of the leg. He might get over his colitis, possibly. We do not know. Time would only tell. We could state the prognosis of the leg definitely, but we did not know the prognosis in the abdomen. The abdominal condition that I refer to is the colitis that I mentioned before. [119]

Cross Examination

of William George Richards by Mr. Brown.

I examined the plaintiff on the 2nd day of July, 1924, at Billings, Montana. I could not answer as to whether I had ever examined him before that time. As far as I know, I had not. I might have examined him before, because they used to send those chaps up from time to time to be examined, and we would send in a report each time. This is the only report you have, I hear, so all I can go by is this report. I haven't any independent recollection of ever having seen him before that time, because there were too many of them. Since that time, I examined him some time last year, when you had the trial here. It was a very superficial examination. Before July 2, 1924, I had never examined him to my knowledge.

In the answer there, commencing with number 11, it says, "Man of good general appearance, nu-

(Testimony of William George Richards.)

trition and musculature good." That means just exactly what it says. You look at the man and he looks fairly well, he is not half starved, and the muscles that he has got left are fairly good. That is plain English. It means his general appearance is good, shows no particular drawing of the face or signs of any great pain, or anything of that kind in his face. But that does not indicate that there is nothing there. We always put down the general appearance in the course of the examination. There is a sort of general survey, and after having made the general survey and stated the general appearance, then we dig into the matters of [120] detail; and the general appearance may be entirely wrong. But of course we do not put down "the general appearance is good" if it is not true. We say, "Abdomen well nourished," which means just exactly what it says, "well nourished." I can't explain "well nourished" any better than that. I am well nourished. If someone is skinny, he is not well nourished. Those words have no technical meaning with the medical profession; that is common English. We then say, "complains of slight tenderness at McBurney's point." McBurney's point is right here. (Indicating.) The report continues, "with no rigidity." The significance of that is that if you have an acute inflammation of the appendix, you will have tenderness over McBurney's point; that is to say, you will have the muscles over McBurney's point tense and hard.

(Testimony of William George Richards.)

The report also states, "Left leg shows amputation five inches above knee articulations. Well healed, cone-shaped stump, with a well healed eight-inch scar extending over end of stump, result of union of antero-posterior flap. Man wears a well built, artificial limb in good condition." As a surgeon, I would say that the result of the job of amputation that had been done to that leg was pretty good; that is, the technical amputation was pretty good. It was about as good a job as a surgeon could naturally expect; but he had lost his leg, which was not the surgeon's fault, of course.

At the time that I examined him I did not know if the abdominal condition that I found was curable or not. That is why we put down here, "Abdominal condition doubtful." [121] We recommended hospitalization, but everybody that goes to the hospital doesn't get cured, and we don't send everybody to the hospital because we expect to cure them. We have a try at it. The fact that a man goes to the hospital does not mean the doctor expects to cure him. I send a good many people to the hospital that I expect to die. I did recommend hospitalization. That was the best chance for him, so we recommended that in our report. At the very bottom of the answer to question 11 it says that hospitalization is recommended.

We have a question mark after "Appendicitis." That means that we were not sure that he had it. I would not say that a condition of appendicitis

(Testimony of William George Richards.)

will sometimes cause colitis. I would not put it that way. I would say more likely the condition that caused colitis would also cause the appendicitis, that the same condition caused the two. I would say that appendicitis might at times cause colitis, but the chances are that there is a common cause for the two, especially with a history like this, with a history of dysentery.

The history is the statement of the patient made to me, verified by the army reports. Every man that is admitted into an army hospital has a record kept of him, and those army reports are all supposed to be kept preserved. As a doctor, I did not have access to his medical report, but they had access to them in Washington. In making my diagnosis, I did not have access to them. I could not look at his army report, which is handed to me, and in a [122] few minutes determine if I can find any condition of dysentery there that I have just referred to. I am familiar with these army reports, in fact so familiar with them that I would like to have time to study this one. At your request, I would be glad to take this home and study it and then come back and testify about it. It would be necessary for me to have more time to examine it.

I do not think you explained this, however. There would not be any record of his dysentery here. If he had it in the army, there would not necessarily be a record of it.

Q. Well, this is the record, Doctor, of the Adjutant General's office?

(Testimony of William George Richards.)

A. I don't care. The Adjutant General's office can't put down anything that it doesn't know; and it says distinctly here that the man had dysentery in the Argonne in October, not treated. Lots of men had dysentery that wasn't treated.

Mr. BROWN: I move that that statement of the doctor be stricken as voluntary.

The COURT: You are not getting anywhere now. Just proceed with the Doctor as to his direct examination, and don't get so far afield.

Mr. BROWN: Exception.

This statement here was the statement that he made to me. [123]

Redirect Examination
of William George Richards by Mr. Molumby.

Q. Doctor, relative to the examination that you made about a year ago, I will ask you to state if you saw any particular change in the condition a year ago from what it was when you first examined him?

Mr. BROWN: Object to that as not redirect examination.

The COURT: Well, I will let him answer.

Mr. BROWN: Exception.

A. Will you state that question again?

Q. Did you notice any particular change in his condition a year ago from what it was when you first examined him in 1924?

A. As far as I remember, not.

L. W. ALLARD,

a witness called in behalf of the plaintiff, being first duly sworn, upon

Direct Examination

by Mr. Molumby, testified as follows:

My name is L. W. Allard. I am engaged in the profession of medicine and surgery. I specialize in surgery and orthopedics. Orthopedics refers to surgery of the bones and joints; in other words, the spine and extremities.

Mr. BROWN: We will admit the qualifications of the Doctor as a regularly licensed and practicing physician. [124]

I am acquainted with Theodore Thompson, the plaintiff in this case, and have examined him in the course of my profession. I am shown what purports to be a report of physical examination made by myself, Dr. Richards and Dr. Morrison. Using that report to refresh my recollection, and summarizing the report as to what we found as to the condition of Theodore Thompson at that time, I would say that this board at that time, because of the specialties involved, divided the work of examination up. Dr. Morrison, a member of the board, examined for eye, ear, nose and throat and head conditions. Dr. Richards examined for medical conditions, and my duty was to examine for orthopedic conditions; in other words, any deformity or condition of the spine or extremities which contributed to or was included in the complaint.

(Testimony of L. W. Allard.)

With particular reference to his orthopedic condition, from the standpoint of the physical complaint, it shows, according to the report, a gunshot wound in the left thigh received in Flanders October 31, 1918. The leg was amputated in the field hospital and he was later sent to different hospitals at Bellue, France; New York; Des Moines, Iowa, and so on, when he was discharged. It will also be noted in connection with this history that a dysentery which he had acquired in October, in the Argonne, was not treated at the time and continued to bother him while he was in the hospital with his leg wounds. The physical examination at that time showed the left leg amputated five inches above the knee articulations, a well [125] healed, cone shaped stump; with a well healed, eight inche scar extending over the end of the stump. This was the result of the union of the anterior and posterior flap. The man at that time was wearing a well built artificial limb in good condition. The report shows an impairment of vision, and the same as to his hearing. The report shows that his weight at that time, without a leg, was 138 pounds. At that time I concurred in the diagnosis by Dr. Richards, which appears on the report, regarding his abdominal conditions; and I made the diagnosis in reference to the leg, which appears in the report. I also concurred in the prognosis which was made.

I examined Theodore Thompson a year ago and I again examined him yesterday.

(Testimony of L. W. Allard.)

Q. What did you find on your examination yesterday, as compared to your examination in 1924?

Mr. BROWN: We object to that, if the Court please, as being too remote; and being, **further, incompetent, irrelevant** and immaterial; and not being connected up with any condition shown to exist except for the amputated leg as of the date of the discharge of the plaintiff from the army and the expiration of his policy.

The COURT: I think he would have a right to make a comparison of the plaintiff's condition a year ago and a few days ago, and with the examination of 1924. He [126] can, if he recalls what he found a year ago. He has a record of what he found in 1924. It depends upon his recollection.

Mr. BROWN: Exception.

Q. Can you answer that question all right, Doctor?

A. The examination yesterday compared with 1924 shows, of course, the condition of the stump as practically the same, in spite of the fact that there is a history of the subject having periods of disability due to the fact that the stump becomes inflamed and irritated from the use of the cups.

The cup is the socket of the artificial leg that the stump sets in. This part of his complaint is due to superficial irritation of the skin, probably due to perspiration and irritation of the stump in the

(Testimony of L. W. Allard.)

cup. It is not unusual for those things to occur. When the subject gets them, he simply has to rest the part and use ointments and alcohol and so on to toughen up the skin again before he can go on. He also called our attention to the condition of his other knee, which he had complained of before and described as a catch or lock, which requires him to stop for the moment and replace his knee, as he says, with his hands before he can go on. This condition dates back to the time when he was, I think, at Fort Lewis, when he strained his knee.

This is the examination made a year ago, and this is what he told me with reference to the condition of [127] the knee. When he mentioned this complaint, I asked him when this began. That is important in order to determine what is wrong. Upon examination of that knee yesterday, I found a knee that was normal in appearance, freely movable, but tender over the external side or inner side of the knee; this tenderness being pretty well localized and not marked by any redness or anything of that sort; but by feeling of something slipping under the palpating finger when the knee was moved. That indicates an irritation in the tissues outside of the knee joint, which may be caused by, for instance, an internal or semi lunar cartilage, one of the cartilages in the going being loose and slipping. I cannot say for sure if that, in my opinion, is what is the difficulty there. I do not know what is causing it. There is no way of definitely ascertaining that. The symptoms are not entirely characteristic of an

(Testimony of L. W. Allard.)

internal semi lunar cartilage slipping, but it is very suggestive.

Upon my examination of a year ago, I also examined the knee. As I recall it, practically the same symptoms and same things were disclosed by my examination a year ago. I think a year ago some crepitus was apparent in the knee. By crepitus is meant a sort of grating of the tissues in the sack around the joint when the joint is moved. It is like rubbing two pieces of leather together.

Q. Doctor, if a patient would have a knee that might have been sprained or injured, and subsequently suffered a loss of the other leg, would the additional strain of carrying his weight on his good leg where that knee had been strained, [128] aggravate that condition?

Mr. BROWN: I object to that as invading the province of the jury.

The COURT: Well, I think he could say whether it might have a tendency to subsequently weaken the other, or irritate the other knee.

Mr. BROWN: Exception.

A. I would answer that by saying that the added strain on a weakened joint would necessarily be apt to increase the symptoms.

Cross-Examination

of L. W. Allard by Mr. Brown.

I do not think this condition that I have testified that I noticed last year and a day or two ago, with reference to the man's right knee, is reported here

(Testimony of L. W. Allard.)

in the examination of 1924. I do not see any record of it here in the report. If I had found it, at least there should have been a record made of it at that time. It was my portion of the examination to examine the extremities or legs of Thompson at that time, and I did that.

CARL BUE,

a witness called in behalf of the plaintiff, being first duly sworn, upon

Direct Examination

by Mr. Busha, testified as follows:

My name is Carl Bue. I reside southwest of Reed Point. I am acquainted with the plaintiff, Teddy [129] Thompson, or Theodore Thompson. He is some relation to me. I think he is a second cousin. I have known Mr. Thompson since 1912. That was when Mr. Thompson first came to this country. When he came here to Montana he came to my place. I think he came to Big Timber, and from there he came out to my place. Prior to the time that he went into the army he worked for me, up in the mountains, tending camp. Prior to his going to the war, between 1912 and 1917, I paid Mr. Thompson the running wages of from seventy-five to eighty dollars a month when he was in the mountain. That did not include his board. He did not have to pay his board; we furnished the board for him. We furnished the equipment for him to work with.

(Testimony of Carl Bue.)

When Mr. Thompson came to this country, he could not talk English. Prior to his going into the service, he associated mostly with Norwegians, who were in my employ and around that community. Mr. Thompson did not get an opportunity to learn much English, and I do not believe he learned a great lot of English prior to going into the service. He could not write.

When he came back from the service, I saw him shortly after his return. He came to my place shortly after he came back. That would be some time in the month of August; I don't remember. Describing to the jury as best I can his physical and mental condition at the time he returned from the service; it looked to me like he was quite nervous and he was always talking more or less about the war—had that in his mind. His leg was cut off and [130] he was getting around on two canes. He had two canes when he came to my place. I think he stayed at my place, when he first came back, something like four or five months, but I could not say exactly. He could not do anything while he was at my place because he was not able to. I think I would have had work there for him if he had been able to do anything. I employed him before he went into the service. When he came back he was not in such physical condition that I could employ him in the same capacity as I had before. After he left my place, I think he went down to visit some of the neighbors there. I think that

(Testimony of Carl Bue.)

would be Mr. Terland and Mr. Crone. I did not see him down there, I do not think.

I loaned Mr. Thompson \$2500.00. The purpose of that was that he wanted to buy a place. As security for the money loaned, I took a mortgage on his homestead and also on that place he was buying. That money was paid back to me. I bought his homestead. I believe that was in 1924, but I am not sure. It was 1923 or 1924, or somewhere along in there, I guess. I would not say for sure, but I think it was 1924. The money that I had loaned him went for credit on the homestead at the time I bought his homestead. I credited that to him. I think that is twenty-four hundred dollars.

Later I loaned Mr. Thompson \$1800.00. As security for that, I took the ranch that he bought—the first place that he bought. Mr. Thompson has not paid back that \$1800.00. I think there is about seven months' interest on that \$1800.00 which he owes me. [131]

During the time since the war I have seen Mr. Thompson off and on about once a month. I could not say whether Mr. Thompson made an effort to work when he came back. He has purchased land from me, and I loaned him the money to purchase land. I do not know if he has tried to run that ranch. He has always got some hired man there; he tried to run it, I guess. He has always had hired help to assist him on the ranch.

Q. But he himself has tried to run the ranch, hasn't he, and couldn't run it?

(Testimony of Carl Bue.)

A. No, I guess he didn't buy it for that. He bought it for a home, I guess.

He has not paid any of the \$1800.00 back. At the time Mr. Thompson went into the service, he was up in the mountain tending camp at the time he was called in for the draft. That would be between ninety and a hundred miles, I believe, from Big Timber.

Cross-Examination

of Carl Bue by Mr. Brown:

Before Mr. Thompson went to the army, I employed him and paid him between seventy-five and eighty dollars a month when tending camp in the mountains. I paid him that amount for about three months of the year, or something like that. During the balance of the year I paid him around fifty dollars a month, I imagine.

I think I loaned him this \$1800.00 in 1931. It was 1930 or 1931; I forget which. I charge him eight [132] per cent. interest. He has been paying that right along.

O. P. TERLAND,

a witness called in behalf of the plaintiff, being first duly sworn, upon

Direct Examination

by Mr. Busha, testified as follows:

My name is O. P. Terland. My residence is Grey Cliff. I do not live right at Grey Cliff, but about

(Testimony of O. P. Terland.)

eight miles southeast from Grey Cliff. I know Theodore Thompson, the plaintiff in this case. I have known him since he came to the country in 1912. He lived in the community where I am when he first came to this country. I live about three and one half miles from Bue's place. When Thompson came to this country, he could not talk English. I could not say how often I saw him prior to the time he entered the United States army. I saw him once in a while. I met him out in the hills when he was herding sheep and sometimes in town.

I saw Mr. Thompson when he came back from the service when he used to stay down to Barstad's and also at Bue's before he came up to our place. But he used to come back and forth from one place to the other; so I do not know where I met him first. That would be just after he came back from the army when I saw him. I believe that was the year 1918. It may be 1919. I have forgotten just when it was. In describing just what his physical condition was; I would say he was different from what he was when he went in. He was in good condition when he went to the [133] army and when he came back he lost his leg and he didn't look like he did when he went in. I do not think he had a peg leg when he first got out, and then he got a wooden leg and he couldn't get around very good then. But now he is getting around a little better than what he did at first. But he don't get around like he should.

(Testimony of O. P. Terland.)

Mr. Thompson lived on some of my land for about two years. I did not rent that to him. He just wanted a place to stay and I let him stay there. He did not have any cattle on this place. He just had two horses, was all. I had a crop raised on it, but he didn't raise any crop. I harvested the crop.

I don't know how often I have seen Mr. Thompson since he came back from the service. I saw him every once in a while. We have been neighbors out there. Sometimes I see him every day. I have had occasion to observe the operations out on his ranch. I see him every once in a while. I have a place just above his place and live down below. He hires all the work done on his ranch. I have never seen him working on the place. He worked in the haying, driving the derrick team. That is all I ever saw him doing around the house. It does not require very much to drive the derrick team. I have a little kid that does that work. That is all it takes, a little kid I have at home. That little kid is about nine years old. That doesn't require very much work; just a little time to drive the team up and back a few steps. [134]

Cross-Examination

of O. P. Terland by Mr. Brown:

I have seen him do some of the chores around the place. He does the chores once in a while, but not very much. I have seen him do the cooking around the place. He cooks once in a while, but not very much while I was there. He always had someone there to do the most of the cooking.

(Testimony of O. P. Terland.)

He produces hay on the ranch. As to whether the ranch appears to be a pretty well-cared-for ranch; it is not bad, what there is, but there isn't so much of it. Most of it is pasture. The hay land produces well when he has rain, but when it don't rain, he don't get much of anything. The hay land produces about as much as the other hay farms in that community there. He gets just about the same yield of hay as the other farmers. His barns and house are kept up in good condition. That is all right. I guess the farm or ranch is managed and operated all right. It is not as good a place for its size as any in the community. It isn't very good. By that I mean that it is rough, and the land itself isn't very good; but it is kept up all right.

I guess I have seen most of his cattle. They are just common range cattle, I guess. They are just the same grade as the average cattle there in the community. He has bred up his herd the same as the other ranchers have, and they are well taken care of. I could not say whether he sold \$400.00 worth of cattle last year. I could not say how much he sold them for, but I know he sold a few. [135]

Redirect Examination

of O. P. Terland by Mr. Busha:

I do not think this place that Mr. Thompson is on is such a ranch that a man could make a living off of it.

O. A. NEPSTAD,

a witness called in behalf of the plaintiff, being first duly sworn, upon

Direct Examination

by Mr. Busha, testified as follows:

My name is O. A. Nepstad. I reside at Shelby. Prior to residing in Shelby, I resided in Big Timber and Grey Cliff. I am acquainted with Theodore Thompson, the plaintiff in this case. I have known him since 1912, when he used to work for Mr. Bue and myself. That was a partnership of Bue and myself. He used to work on the ranch and herd sheep and tend camp. The pay for that work used to be different wages. Herding would be somewhere around fifty dollars a month, I should judge. It was different prices in different years, and they would always get better wages for tending camp up in the mountains. Up there they would be paid as high as a hundred dollars a month. I do not remember just what they were paying in 1917 at the time Mr. Thompson went to war, but I know afterwards they were paying as high as \$150.00 a month for herding sheep. I knew Mr. Thompson between 1912 and the time he went to the army. I did not see him so often, because he was generally working, but I had an opportunity to converse with him once in a while. Mr. Thompson did not talk [136] English very much. Mr. Thompson was mostly around the ranch there when he was not herding sheep. The rest of the men that used to work there were his friends and fellow associates. They were

(Testimony of O. A. Nepstad.)

of different nationalities. They were mostly Norwegians, and conversed in Norwegian mostly. I never had to do any writing for Mr. Thompson.

Subsequent to his discharge from the army, I saw Mr. Thompson first when he came up to Big Timber. I was living at Big Timber at that time, and I think he came up from Bue's. I cannot say exactly the date when that was, but it was some time about October or November, 1919. I could not say exactly what his physical and mental condition was at that time. He did not look as good as he used to, and he was walking with crutches then. I owned a store in Grey Cliff and Mr. Thompson traded there. I would see him when he came in to trade there. Mr. Flatum was there running the store after Mr. Thompson came back from the army. I was in Big Timber then, in the bank. That was the Commercial Bank and Trust Company. While I was in the bank Mr. Thompson borrowed money off and on. At times he borrowed some from me personally, in amounts of one or two hundred, or something like that. He would come in sometimes to get a few dollars for certain things and then he would come and pay it back. It is pretty hard to tell you how much he did get. He had his bank account in our bank. I was vice-president in the bank. I have been to Mr. Thompson's ranch, but I do not know how he operates the ranch. I do not know much about that. [137]

(Testimony of O. A. Nepstad.)

Cross Examination

of O. A. Nepstad by Mr. Brown.

Thompson was considered a great credit risk by me in the bank for a small amount, for the amounts that we loaned him. Of course, when sheep herders were getting \$150.00 a month, that was before the war. We have never paid that since. I have been on Mr. Thompson's ranch and I have a ranch of my own. As to how the ranch appeared to me, with respect to being well managed or otherwise; I have not looked around the ranch much since Mr. Thompson got it. I have been up there a few times since he has been on it, but never looked it over.

LEO OVERFELT,

a witness called in behalf of the plaintiff, being first duly sworn, upon

Direct Examination

by Mr. Busha, testified as follows:

My name is Leo Overfelt. I reside at Big Timber, Montana. I know Teddy Thompson or Theodore Thompson. I have known him since August, 1917. The way that acquaintanceship came about, I guess he heard that I was leaving for the army, and Mr. Thompson went to the army with me. We served together in the army at Camp Lewis and overseas, in the 347th Machine Gun Battalion, 91st

(Testimony of Leo Overfelt.)

Division. We were both in that battalion when we were stationed at Camp Lewis, and we went over seas together. While I was in Camp Lewis I knew that Mr. Thompson was around the quarters there, but I could not say just what it was for. I really did not associate with him much at the time, you see; but [138] I noticed him being around the quarters for several days, but never learned what it was for. I went up to the front with Mr. Thompson. While at Camp Lewis I knew that Mr. Thompson was in the hospital, but I do not know what it was for. When we got over-seas I went up on the front with Thompson. We were together on the front lines about eight or ten days. We were on the St. Mihiel front line, and from there to the Argonne. I saw Thompson at St. Mihiel, and I saw him in the Argonne.

When a platoon is spoken of, it means one third of the company; the first, second and third platoons of the company; and the company consisted of about two hundred men. A platoon would be a third of two hundred but I would have to have a pencil to figure out how many that would be. So that, we were together most of the time.

I was wounded. Prior to the time I was wounded, the food that was served to us on the front line was "corn willie" practically, and hard tack. It was corned beef, or "corn willie" we called it. We did not have any water sometimes. We got our water while I was on the front line just any place we

(Testimony of Leo Overfelt.)

could, which would be along in a coulee or shell hole or any place you might be able to get it. The condition of that water that we were drinking was poor. We were not supposed to drink it, because it was impure. It was rain water or springs or anything that you might be crossing at the time. I drank some of that water. From the water or food or something, I practically always had diarrhea. It was a bad enough case [139] of diarrhea to make you quite weak and a sickened condition. I lost weight from having it, and all of them that I saw did. You wouldn't hardly recognize some of your own men in the company. I was wounded before Mr. Thompson was. When I returned to this country, if I remember right, I saw Mr. Thompson some time in September, 1919. At that time he was on a cane or a crutch and he walked with a limp, and he looked quite thin, he was run down, and he did not look like himself before he went into the army. He seemed nervous and seemed to stutter a little when he talked, or something of the kind. His lips would quiver and tremble.

I have had occasion to see him since quite often; maybe once a month. From the condition as I described it in 1919 and his condition now I do not see that he has changed much. He still looks as bad as he ever did.

Cross Examination

of Leo Overfelt by Mr. Brown.

He looks as bad now as he every did. My occupation is farming. I work on a farm. Between the

(Testimony of Leo Overfelt.)

Government and myself, I own my own farm, like most of those places. I was over-seas. I spoke of having the diarrhea over there. I had it quite a while, until the time I was wounded and was in the hospital. I had it for two months or better. After that the condition cured up, in a way, so that you didn't have it so badly. You seemed to have after effects so that your stomach would be in a weakened condition for some time. [140] I would not say that that continued for some time and then it got all right. Mine is not all right yet. I am troubled with diarrhea sometimes.

I have lived around Big Timber practically all of my life since I was three years old. I was not a witness in this case last year. I was living at Big Timber last year, in April, 1935.

ADOLPH MYRSTOL,

a witness called in behalf of the plaintiff, being first duly sworn, upon

Direct Examination

by Mr. Molumby, testified as follows:

My name is Adolph Myrstol. I live six miles southwest of Reed Point, close to where Theodore Thompson lives. I have known Theodore Thompson since 1912. I was not born and raised in this country. I am a Norwegian. I came to this country in 1909. From 1912, when Theodore Thompson came to this

(Testimony of Adolph Myrstol.)

country, until 1917, when he enlisted, I know for whom he worked. He worked for Mr. Bue and Mr. Nepstad. The type of work which he was doing was ranch work and handling sheep and tending camp and so on and so on. I worked with him during that period, from 1912 to 1917. During that period, from 1912 to 1917, he did not have opportunity to associate with many people that talked English. We people who were working there on that ranch were mostly Norwegians. He never could talk good English. When we conversed there on the ranch, we talked Norwegian.

I was in the army myself. I remember when [141] Theodore was called into the army. I was called at the same time. When we were called in, we were way back there in the Bull Mountains. It was named the Beartooth Mountains at that time, and in fact I think it is yet. It was a few miles from Yellowstone Park. I call it 110 miles from Big Timber. We received word up there that we were to go in to Big Timber to go into the army. Mr. Nepstad and Mr. Bue sent two men up there to take our places. The men got there along about sundown, in the evening. If I remember right, we left quite early in the morning, about sunrise, on horseback; and we made it in to Big Timber that night. We arrived at Big Timber at eleven o'clock, I remember very well.

Theodore and I did not go into the same outfit in the army. While we were in the army we saw

(Testimony of Adolph Myrstol.)

one another. I saw him at Camp Lewis on a few occasions. I went over-seas first. We were both at Camp Lewis together about two or two and a half months; I could not say. I do not recall his being placed on quarters there. I was not there at that time. I again saw Theodore, I would say, the latter part or middle of September, 1919, after we had both gotten out of the army. When I saw him after he got out of the army, I would call him in very poor condition. The man was nervous and excited when he saw me. To me he looked rather skinny and nervous. As to how his nervousness showed itself; I am not a doctor to really explain that, but anyhow, he was a different man altogether from what he was when he enlisted. If you talked to him on some subject, he would start talking about some- [142] thing else. It seemed like the least little move was made was excitement, and his face turned white as a sheet.

He afterwards lived on my place. That was in 1921. I would say he lived there a period of a year and a half or a year, somewhere along there. I do not know for sure. I was not married at that time. I was using the place at that time and lived there with him part of the time. The rest of the time I was working for Mr. Bue part of the time and was living away from home, and I was down there about five times a week in the evening. He had absolutely no work to do there on my place, and paid no rent. I just let him live there and

(Testimony of Adolph Myrstol.)

have a place to stay. With reference to the wood that was necessary for cooking and heating, he did not chop the wood and saw the wood. I had quite a little wood split up there for my own use, and I told him to go ahead and help himself.

Since then I have not done some work for Theodore on his place. I have lived with him on his place and have seen him up there. I saw him off and on up on his place quite often, especially in the Fall when I am riding for cattle up that way. I stay there at night off and on. I never have seen him do any work up on his place. He did not do any work. I have seen him ride a horse. I only saw him get on a horse once or twice, or maybe three or four times; but it is a very gentle horse and he leads him up to a rock or stump or cut bank. He places the horse right, and he has a funny way of getting his right foot into the stirrup, and just about all the movements he goes through [143] to get in the saddle I just couldn't describe or explain; but anyhow, he gets on the horse different from anybody I ever saw, or different than I do, anyhow.

I have been with him when he drove a car. When he drives a car, he uses his right hand or left hand for the throttle and gas feed, and uses his right foot, which is his good foot, on the brake or on the clutch; and when he gets to a hill, he has to stop and shift gears.

No Cross Examination.

JAMES R. DAVIS,

a witness in behalf of the plaintiff, being first duly sworn, upon

Direct Examination

by Mr. Molumby, testified as follows:

My name is James R. Davis. I have been living for the last three or four years with Teddy Thompson. I have known him since 1924. During the time between 1924 and the time I began living with him, I would say I saw him about once a month. Since I have been living with Mr. Thompson, I have been doing the work around the ranch when he has it, if he just needs the one man. As to the work that is to be done on the ranch; he just puts in the crop in the fall and cuts rye in the summer time for hay. There is some alfalfa in in the bottoms. Excepting for putting up the hay, I have done all the work that is done on the ranch while I have been there. During the haying season he has to have more men. This hay land is not all in one [144] piece; it is in different patches. The area of the largest patch of hay land that he has there would be about twelve acres. There is about forty acres, altogether, of hay land.

I have seen Teddy attempt to ride a horse. I heard the way he described how he got on a horse here. That is true. I have seen him drive an automobile. I have heard Mr. Myrstol describe the way he drove an automobile. What Mr. Myrstol has to say with reference to that is true. With reference to

(Testimony of James R. Davis.)

Theodore's stomach condition, I have noticed that he has to diet himself when he eats. He can't eat anything with acid, like fruit or sugar, anything that is sweet. I have noticed that he has been subject to frequent attacks of vomiting. I do not just remember how frequently those attacks come on him; but it is once or twice a month some months, and some months it goes longer. Those attacks make him weak, and he looks yellow in the face. I have observed him at times when he has been up and around on his feet. When he walks, his right knee swells up, on his good leg, and he can't hardly walk on it. That happens whenever he is on it for any length of time.

I know this ranch that Theodore is on. Part of it is neither grazing land or farm land. It is too rocky and rough, there is no feed to it. The bottom land that he cultivates is about the only good land on it. Around forty head of cattle could be run on all the land he has on the place and be taken care of properly. I have done ranching myself. As to whether it is possible to make a living off of forty head of cattle on such a place as he has got, [145] and hire the work done; I do not know whether it is possible or not. I could not make it. I have never known of it to be done.

Cross Examination

of James R. Davis by Mr. Brown.

My testimony is that a man can't make a living on this 320 acres of land that Thompson has got. I

(Testimony of James R. Davis.)

do know that he has in all 750 acres of land, and it is my testimony that he could not make a living out of the whole 750 acres, with forty acres of agricultural land that he can raise hay on. It can't be done. I have lived there on this ranch about three years, off and on. I have been there most of the three years. I would say that I have been there as much as a year and six months out of the three. I have worked there for him for wages during that entire time. He pays me thirty-five or forty dollars a month. It is thirty-five and forty dollars a month. In the Fall of 1934, I think he paid me thirty-five for one month. He started paying me forty last Fall. He is not still paying me forty dollars. I am not working there now. I quit there in December. He did not pay me forty dollars up until December every month. He just paid me forty dollars in the Summer months. During the rest of the time he did not pay me anything, just board. I got no wages then. During the three years that I have lived with him I have not received my thirty-five and forty dollars a month during the Summer months, not during all the Summer months; only when [146] he has got work, just when he puts in a crop in the Fall; and I got two dollars a day for haying. The rest of the time I have just lived there and got my board, doing the chores. I would say that I was paid not over two months during the Summer. I do not know if that is the arrangement that he has had with the other men that have stayed there too.

(Testimony of James R. Davis.)

As to the kind of buildings, etc., his place appears good. They are well kept up. His crops appear to be well cultivated, and the entire ranch appears as though it is properly operated. I would say that the crop produced each year on the land that is cultivated is as good a crop as is produced on like land around in the community by the other farmers. It produces about its maximum for that type of ground. I have cultivated that land myself, and it has been under the supervision and direction of Thompson. He has told me how to do it. From what I have observed, it appears to me that he knows how to operate that property and give directions for its proper management. He knows how the soil should be tilled to raise a crop. He can direct the men what to do in order to farm it. He can do that, according to my observation and he has done it for years. He has managed and supervised that property.

Redirect Examination

of James R. Davis by Mr. Molumby.

With reference to supervision, he does not walk over the hills to see if the fence is kept up. He has never gone out over the fields while I was there, and has not gone [147] out over the fields to look over the fence. He has never rode a horse to turn cattle or to drive cattle. He has never harnessed a team while I was there. He has never rode a mower while I was there. He has never rode a rake while I was

(Testimony of James R. Davis.)

there. He has walked across the irrigated land, to see how it was irrigated, while I was there. He has never walked up to the pasture part of the land to inspect it, over the hills, while I was there. In supervising my work there, Theodore never did any more than to go out and tell me to cut the hay; and in putting in the rye, he never did anything more than to tell me to put it in.

R. H. CARTWRIGHT,

a witness called in behalf of the plaintiff, being first duly sworn, upon

Direct Examination

by Mr. Molumby, testified as follows:

My name is R. H. Cartwright. I live over near Big Timber, and Grey Cliff and Reed Point. I have lived there for a good many years, for twenty years. I am acquainted with Theodore Thompson. I have known him ever since 1915. I was slightly acquainted with him before he went to the war. Before he went into the army, I considered him a whole man, with reference to his physical condition. I saw him the next morning after he got out of the army. I was standing on the platform there at Grey Cliff and I saw him crossing the track over at the depot, and he was walking on sticks—had a couple of walking sticks. I made an assertion with reference to his condition that [148] he was a wreck; that it was too bad. I noticed him to be nervous and

(Testimony of R. H. Cartwright.)

run down. His nervousness showed itself in different ways, through excitement and every way, pretty near. I saw him frequently after he got back, and have seen him frequently up to the present time. I have visited him on his ranch since then. I have not seen him at work on the ranch to speak of, except some light chores. I have seen him ride horseback. I have heard the way these other men have described the extent to which he could ride a horse, and I have heard him describe it. That is true. I have ridden with him in the car. I have heard how these other men have described the way he drives a car. What they say with reference to that is also true. I have seen him carry a part of a bucket of slop over to his hog over across the lot, if there was nobody around; and feed his chickens. And one morning I came down to help him hay, and he had cut one round on the mower. That is some of the nearest farm work I have ever seen him do. He had cut this one round before I got there. It was a patch of four acres. After cutting this one round, he did not do any further work. There were boys coming to help him, and somebody took charge of the mower and went ahead. He went into the house. I have seen him milk gentle cows there. I was not there at one time when he got hurt milking a cow, but I was there the next morning early after he got hurt milking a cow. He was not milking the cow. This was a dry cow. I saw him, though, the next day after he had had some kind of an accident. [149]

(Testimony of R. H. Cartwright.)

Cross Examination

of R. H. Cartwright by Mr. Brown.

I have not seen him do some fencing. I have seen him do some of the chores around the place, and I have ridden with him after cattle. He rides all right after he gets on the horse. He will ride down the road in a walk. Considering the shape he is in, I would say he gets around on his leg in good shape at times. I did not see him driving a mowing machine. He was standing by the mowing machine and it had cut one round. That is my signature there, "R. H. Cartwright." I made a statement to a special agent of the Division of Investigation of the United States Department of Justice on February 6, 1935, and recall this man being around to see me. As to whether I recall that I said this over my signature: "During the past several years Theodore Thompson has done the light work around his place, such as repairing fences, and he runs a mower part of the time during haying season"; I do not think I put that in. It is over my signature, but I did not read it. He read it to me. It also states, "I have ridden with him when he was gathering up cattle during the branding season, and he rides fairly well after he once gets astride the horse, his main difficulty being in mounting." That is true. I do not remember making the statement there at all, as follows: "Other than the absence of his left leg, I have not known

(Testimony of R. H. Cartwright.)

him to be ill, and he walks and gets around with his false leg in fairly good shape." That is over my signature, but I did not read it before I signed it. It was read to me, but I do not remember all of this stuff that is in there. [150] That morning that I saw him standing beside the mowing machine I do not know who harnessed the team that morning. There were other men there; there was another mowing machine there.

Redirect Examination

of R. H. Cartwright by Mr. Molumby.

I have seen him riding a horse at other times than the one that I mentioned. I have ridden with him different times when we were after the cattle during the branding season and gathering for beef; just be there to show the cattle.

LEO OVERFELT,

recalled as a witness for the plaintiff, having been previously duly sworn, upon

Direct Examination

by Mr. Molumby, testified as follows:

I am the same Leo Overfelt who has testified before. There was gas in the area that I spoke of when I was over-seas in the Argonne. Gas was thrown on Mr. Thompson and myself in that area. It was mustard gas and cloud gas. I do not know

(Testimony of Leo Overfelt.)

what type of gas cloud gas is. It is thrown in a cloud, like smoke.

Q. Do you know the effect of that gas upon you and the other men in your company or battalion?

Mr. BROWN: We object to this as immaterial.

The COURT: Oh, it might be material, all right, if he knows of his own knowledge. [151]

Mr. BROWN: Exception, please.

A. I know what it does when you get a whiff of it. It kind of cuts your breath short. I got a little of it. I didn't get no great amount, because I had my gas mask handy all the time.

I saw others who had inhaled the gas.

Q. What was the effect on them?

Mr. BROWN: We object to that as incompetent, irrelevant and immaterial.

The COURT: Oh, if he knows.

Mr. BROWN: Exception.

A. Anyone that is gassed is short of wind and breathe deep, like they are struggling for breath.

Q. Make them sick?

A. Yes.

Mr. BROWN: I move to strike these answers, on the ground that he isn't qualified.

The COURT: Well, he described the different kinds of gas and said he inhaled it himself, and what the effect was on him, and he was

there under the effects of it and he told what they did. I think that is all right.

Mr. BROWN: Exception.

(Recess from 12:00 noon to 1:30 p. m. 6-24-36)

[152]

D. CLAIBORN,

a witness called in behalf of the plaintiff, being first duly sworn, upon

Direct Examination

by Mr. Molumby, testified as follows:

My name is D. Claiborn. I live at Big Timber. I am engaged in the profession of physician. I have practiced my profession as a physician since 1898. I am acquainted with Theodore Thompson, and have known him ever since his discharge from the army. Since his discharge from the United States army in the World War to the present date I have prescribed for a certain stomach trouble that he has been bothered with, irregularly, two or three times a year, perhaps continuously since his discharge.

I have been designated as Veterans Physician by the Department, and I contact nearly all of the boys in that locality who are invalid. I have not written many letters for the plaintiff that were sent to the Veterans Bureau, but I have written possibly two or three a year off and on.

(Testimony of D. Claiborn.)

Cross-Examination

of D. Claiborn by Mr. Brown.

Except one time when I was called to see Mr. Thompson at the ranch, all of the other occasions when I have prescribed for him have been for more or less trivial conditions, things where he was ambulatory, as we say, when he was up to the office, usually for constipation or a more or less minor ailment. [153]

Mr. MOLUMBY: Plaintiff rests.

Thereupon, without the presence of the jury, the defendant submitted its motion for a directed verdict, as follows:

Mr. BROWN: Comes now the defendant, at the close of the evidence of the plaintiff, and moves the Court to direct a verdict in favor of the defendant and against the plaintiff, on the following grounds and for the following reasons:

1. That the evidence is insufficient to sustain the material allegations of the plaintiff's complaint or to support a verdict in favor of the plaintiff and against the defendant; or to warrant the Court in entering a judgment in favor of the plaintiff and against the defendant, if the jury's verdict were in favor of the plaintiff.

2. That it appears from the uncontradicted evidence herein that the only disabilities suffered by the plaintiff at the time of his discharge from the army was the loss of his left leg, which, as a matter of law, does not constitute a total and permanent disability.

3. That it appears from the uncontradicted [154] evidence herein that the plaintiff was offered vocational training by the defendant and that he deliberately refused to accept such vocational training, and that he refused to in any manner improve himself so as to enable him to earn a living and to follow a substantially gainful occupation, in spite of his handicap.

4. That it does not appear from the evidence in the case that the plaintiff made any endeavor to fit himself for any work that a one-legged man can ordinarily engage in or to engage in any work which ordinarily a one-legged man could do.

5. That it appears from the uncontradicted evidence in this case that the plaintiff has never at any time sought from the defendant, or from anyone else, any medical treatment or hospital treatment for his alleged stomach trouble or for the alleged injury to his right knee or his alleged nervousness or sickness which he claims constitutes a disability in addition to the loss of his leg; and that he has refused to accept any such treatment; and that by reason of his failure to seek or receive from

the defendant such medical and hospital treatment, and his refusal to accept the [155] same that he cannot recover in this action for any claimed sickness or disability.

The COURT: Well, gentlemen, I suppose I could permit you to argue the motion; but I have in mind the evidence so clearly, and it is about the same as the last time the case was tried, and it is all a matter for the jury. And in order to rule with the defendant on this motion, I would have to totally disregard the testimony of the defendant himself and the circumstances surrounding his life. Of course, there are contradictions here in the way of documentary evidence, which vary quite seriously in some respects, which lessen, or rather perhaps I should say, affect the value of the testimony given by plaintiff; but that is a matter for the jury to determine, whether they will accept his version of the facts, or whether they will accept this documentary evidence and matters that have been presented here that rather detract from his evidence.

And on the other hand, you can't conclude the case from the evidence of the plaintiff altogether, because his neighbors have come in and testified to the conditions surrounding him and what he did and what he [156] did not do, and what he was able to do.

So far as vocational training is concerned, of course it is a question whether he did absolutely reject the offer of the Government to

fit him for some useful occupation. They were going to train him in agriculture, if they were going to train him at all. That is what he was taking there. And it develops that he had a pretty good ground, as far as I could determine. But while he was unable to do the work himself, the neighbors say and he says, that he had others do it for him; but he paid for the work out of his compensation. It seems to me that this is one of those cases to go to the jury, and if it was not credible evidence, I would be inclined to sustain a verdict for the defendant. But in the shape the decisions are now, it is anybody's game, when you get up to the higher Court, and they are able to construe these matters in such way that either side may prevail upon a motion such as this. But I feel that so far as this Court is concerned, there is sufficient evidence here to go to the jury, and they may perhaps properly say that there is a preponderance of evidence on the part of [157] the plaintiff. And that is for the jury to say. So, I will overrule the motion, and you may bring in the jury.

Mr. BROWN: May we have an exception, Your Honor?

The COURT: Yes, you may have an exception.

Thereupon the jury were returned into Court, and the following proceedings were had:

Mr. MOLUMBY: May the record show the admission of counsel on a matter that I over-

looked, and that is the citizenship and residence of the plaintiff in the State.

Mr. BROWN: Yes, we admit that. I think there is a denial of the allegation of the complaint, and I intended to call your attention to that.

The COURT: Very well, the record may show that.

Mr. BROWN: We offer in evidence as a part of the original file of the Government in this case the Defendant's Exhibit 21.

Mr. MOLUMBY: To which we object upon the ground and for the reason that there is no proper foundation laid; there is no application or anything to show that it was ever communicated to or received by the plaintiff or anyone. It is an unsigned typewritten piece of paper, by someone unknown. [158]

The COURT: What does it purport to be?

Mr. BROWN: It is a carbon copy of a letter, Your Honor.

Mr. MOLUMBY: On the further ground it is a self-serving declaration.

Mr. BROWN: I can call Mr. McGan, but it is a part of the record in this case, Your Honor.

The COURT: Well, I think perhaps counsel's objection would be good under the circumstances.

Mr. BROWN: As to no identification?

The COURT: Yes; that is a copy, doesn't show a signature at all.

F. J. McGAN,

called as a witness in behalf of the defendant, being first duly sworn, upon

Direct Examination

by Mr. Brown, testified as follows:

My name is F. J. McGan and my residence is Butte, Montana. My occupation is Attorney for the Department of Justice. As such Attorney for the Department of Justice, I have in my official custody now certain original files and documents of the United States concerning this particular case and the compensation case of Theodore Thompson, the plaintiff in this action.

Mr. MOLUMBY: If the Court please, our objection don't go to the point that it is a part of the files. We will concede that [159] it is a part of the files.

The COURT: It is a copy of an original record. Now they will have to account for the loss of the original. Whom is it addressed to?

Mr. BROWN: It is addressed to the plaintiff in this action, if the Court please.

The COURT: Then you will concede that this is a copy of the original record of the Government in this action?

Mr. MOLUMBY: We will concede that it is in the file. That is as far as we can go. But that does not give us an opportunity to cross-examine the person who made it, and there is nothing to show that it was ever received by the defendant.

(Testimony of F. J. McGan.)

The COURT: That is true. You may have an exception to the ruling.

DEFENDANT'S OFFERED EXHIBIT
NUMBER 21.

Jan. 16, 1920.

From: District Headquarters,
District #10, U. S. P. H. S.,
744 Lowry Bldg., St. Paul, Minn.

To: Theodore Thompson,
Greycliff, Montana.

Subject: Hospital care.

In Nov. Dr. T. V. Moore of Billings examined you and reported you as suffering from chronic intestinal infection. He advises that you should be under hospital care but stated you would not accept. It seems to me you [160] ought to be under treatment. We are ready to provide it at the expense of the Federal Government. Have you applied for compensation? If not, you should do so filling out form 526 and send same to this office with certified copy of your discharge papers.

H. M. BRACKEN,
Surgeon (Reserve)

THEODORE THOMPSON,

recalled as a witness for the defendant having been previously duly sworn, upon

Direct Examination

by Mr. Brown, testified as follows:

In January, 1920, my post office was Grey Cliff, Montana. I do not remember if prior to January 16, 1920, I had been examined by Dr. T. V. Moore, of Billings, Montana, or not. I had been down to Billings for examination by several different doctors, but I do not remember the names of them. I do not remember whether I was examined by Dr. Moore or not; I could not say for sure. I cannot read the Defendant's Exhibit 21. I could not say whether in 1920 I received a letter from a H. M. Bracken, a Surgeon in the District Headquarters, in the employ of the United States Government at St. Paul, Minnesota, in which he said that I should be under hospital care, informing me that they were ready to provide it at the expense of the United States Government, and asking me if I had applied for compensation. I do not remember if I received such a letter. I won't say [161] that I did, and I won't say that I did not receive such a letter, because I do not remember. I do say that my address was Grey Cliff, Montana, at that time, and that I had been in Billings at that time to be examined by some Government doctor.

Mr. BROWN: We renew the offer, if the Court please (Defendant's Exhibit 21), as part

(Testimony of Theodore Thompson.)

of the original file of the Government, and under the presumption of the name and identity of the address of this plaintiff, it being a copy of a letter that was mailed to him. The original would not be in the possession of the United States Government.

Mr. MOLUMBY: To which we object on the grounds heretofore stated in our objection to its offer in the first instance.

The COURT: Well, I think I will have to sustain the objection.

Mr. BROWN: And may we have an exception, if the Court please?

The COURT: Yes.

Mr. MOLUMBY: And may the jury be instructed now that they disregard the letter?

The COURT: The jury will be instructed at the proper time and now to disregard anything that you heard in the reading of that letter, because I ruled it out of the case. [162]

Defendant's Exhibit 22 is shown me, dated June 21, 1920, addressed to Theodore Thompson, Grey Cliff, Montana, in which I am advised that under date of May 21st I was examined by Dr. P. L. Greene, of Livingston, Montana, and in which they enclosed transportation from Grey Cliff, Montana, to Minneapolis, Minnesota, with a hospital card admitting me to St. Barnabas Hospital. I cannot remember receiving such a letter as that. I can't

(Testimony of Theodore Thompson.)

remember that. I could not say if I received transportation; I do not remember.

Mr. BROWN: We offer in evidence, if the Court please, the Defendant's Exhibit 22.

Mr. MOLUMBY: To which we object on the same grounds stated in our objection to the offer of Defendant's Exhibit 21. We object on the same grounds, that it is a copy, from the same party, written exactly the same as the other.

The COURT: Let me see those letters? Do you mean to say that you do not remember any transportation being sent to you by the Government to go somewhere for treatment?

A. No, sir; I don't.

The COURT: Where are those letters? Is that a part of the A. G. O. record?

Mr. McGAN: It is a part of the compensation file, Your Honor. [163]

The COURT: I expect if it came up that way, in the Adjutant General's Office, such as have been received by the Courts—all sorts of communications can go in. But there are some separate and distinct objections to the admission of this form of a letter in evidence, a copy.

Mr. MOLUMBY: There is a distinction between the Adjutant General's Office, Your Honor, and this office. As to the Adjutant General's Office, we have a special statute making them admissible.

(Testimony of Theodore Thompson.)

The COURT: Yes, making them admissible. I shall have to sustain the objection to the introduction of that exhibit.

Mr. BROWN: May we have an exception, if the Court please?

DEFENDANT'S OFFERED EXHIBIT
NUMBER 22.

June 21, 1920.

From: Supervisor, District #10,
Lowry Bldg., St. Paul, Minn.

To: Theodore Thompson,
Greycliff, Mont.

Subject: Hospital care.

Under date of May 21st you were examined by Dr. P. L. Greene of Livingston, Mont. who advises hospital care. Enclosed find transportation from Greycliff, Mont. to Minneapolis, Minn. with hospital card admitting you to [164] St. Barnabas Hospital where you will be under the care of Dr. J. F. Avery.

Transportation and meal requests should be used on trip only. Kindly return all unused transportation and meal requests to this office for cancellation.

By direction of the District Supervisor.

H. M. BRACKEN,

Surgeon (Reserve).

Copy Dr. Avery

Copy St. Barnabas Hos.

(Testimony of Theodore Thompson.)

I am shown a letter dated September 20, 1920, marked "Defendant's Exhibit 3, signed by C. A. Zuppann, District Vocational Officer, in which he informs me that he has in my file a statement to the effect that I will be prepared to continue my training this fall, informing me that the fall term at Bozeman, Montana, starts on September 28, and informing me that a letter authorizing me to travel is enclosed and asking me to fill out a blank showing the date that I will enter training and mail same in the enclosed envelope which requires no postage. I cannot remember if I received such a letter about September 20, 1920, requesting me to come back to Bozeman to take vocational training. I do not know whether I did or did not. I am shown another letter, dated October 20, 1920, addressed to Theodore Thompson, Grey Cliff, Montana, signed "C. A. Zuppann, by Leif Fredericks, Local Supervisor," in which they say that on the 20th of September the District Office in Minneapolis [165] sent me a letter, together with forms and transportation, requesting me to enter training in the College of Agriculture at Bozeman, Montana; also stating that they have not been returned to the office and that I have not yet given my reasons for not accepting the vocational training offered, and asking me whether or not I desire to avail myself of their offer of vocational training. I do not remember if I did or did not receive such a letter after October 20, 1920.

(Testimony of Theodore Thompson.)

Mr. BROWN: These are Defendant's Exhibits 3 and 4, if the Court please, and we now offer them in evidence.

Mr. MOLUMBY: To which we object on the same ground.

The COURT: It will have to be sustained.

Mr. BROWN: Your Honor, may we have an exception to the ruling of the Court, if you please.

DEFENDANT'S OFFERED EXHIBIT
NUMBER 3.

September 20th, 1920.

Mr. Theodore Thompson,
Grey Cliff, Montana.

Dear sir:

We have in our file a statement to the effect that you would be prepared to continue your training this fall. The Fall term at the College of Agriculture, Bozeman, Montana, starts on September 28th. We are therefore enclosing you transportation for the purpose of reporting in time [166] to start your training when the school opens. Please report to Mr. Wm. F. Schoppe who will help you get started. Use this letter as an introduction.

A letter authorizing you to travel is enclosed.

Kindly fill out the enclosed dependency affidavit and return to this office as soon as possible. Also fill out the enclosed blank showing the date you enter

(Testimony of Theodore Thompson.)

training and mail same in the enclosed envelope which requires no postage.

Yours very truly,

O. W. JOHNSON,

Ass't to C. A. Zuppann,

District Vocational Officer.

DEFENDANT'S OFFERED EXHIBIT
NUMBER 4.

Helena, Montana,
Oct. 20, 1920.

Mr. Theodore Thompson,
Grey Cliff, Montana.

Dear Mr. Thompson:

Under date of September 20th, the District Office in Minneapolis sent you a letter, together with several forms and transportation request, authorizing you to enter training at the College of Agriculture, Bozeman, Montana.

These have all been returned and forwarded to this office. As you gave no explanation as to why same were returned and the reason for not desiring to take the [167] training offered you, we are writing to ask that you kindly advise this office as soon as possible, using the enclosed self addressed envelope which requires no postage, for your reply, your reason for not accepting this training.

We assume however, that you care to avail yourself of this vocational training at some later date,

(Testimony of Theodore Thompson.)

if you are not at the present time able to do so, and we would request that you kindly advise this office a week or ten days in advance as to when you will be able to commence your training, and transportation will then be forwarded to you to your place of training.

Assuring you of our personal interest in your case and hoping we may hear from you in the very near future in regards to the above, we are,

Yours very truly,

C. A. ZUPPANN

District Vocational Officer

By: LEIF FREDERICKS

Local Supervisor.

Enclosure. [168]

D. CLAIBORN,

recalled as a witness for the defendant, having been previously duly sworn, upon

Direct Examination

by Mr. Brown, testified as follows:

I have already stated that I am a physician. I am also President of the Citizens Bank and Trust Company at Big Timber. As such President of the Citizens Bank and Trust Company at Big Timber I have, at the defendant's request, produced the records showing the deposits and withdrawal by the plaintiff of money in our bank. Those records show the deposits and withdrawals from 1919 until last Saturday evening. The total of the deposits to date

(Testimony of D. Claiborn.)

was run on an adding machine for me. I did not run it. That total is \$27,218.92. That is the total of money that he has deposited that has gone through the bank since 1919. This first entry in here is March 16, 1920, and that amount which I have testified to is the amount of deposits from that date.

Cross Examination

of D. Claiborn by Mr. Molumby.

The last entry in this record is of last Saturday. I do not know when the last deposit was made, but that is the complete records up until and including last Saturday.

Mr. MOLUMBY: Have you offered these in evidence?

Mr. BROWN: No. I just put that total in.

While these are not in evidence, I would like to take them back with me, because they are the only records we have. I would not object to leaving them here during the trial, [169] if there is a possibility that some items should be referred to.

Mr. MOLUMBY: It may be stipulated in the record that the records of the bank, concerning which Dr. Claiborn has testified, may be used by either party for such information as they desire, by reading them into the record or to the jury.

Mr. BROWN: Yes.

The COURT: Very well.

F. J. McGAN,

recalled as a witness for the defendant, having been previously duly sworn, upon

Direct Examination

by Mr. Brown, testified as follows:

I now have in my custody, as an officer of the Government, all of the compensation file of Mr. Thompson, the plaintiff in this case. That file which I have discloses the amount of compensation and various amounts from time to time of compensation that have been paid by the defendant to Thompson. I have made an abstract of that information, which I have before me. I can tell when the Government first began to pay compensation to Mr. Thompson. They first commenced on the 14th of August, 1919. They paid him then \$30.00 a month, and that continued until the 4th of January, 1920. A change was then made in the compensation, and beginning with the 5th of January, 1920, he was paid \$80.00 a month. From the 5th of January, 1920, [170] he has been paid less than \$80.00 a month. That eighty dollar payment lasted from the 5th of January, 1920, to the 30th of April, 1920. Commencing with the 1st of May, 1920, and ending with the 31st of December, 1925, he received \$63.00 per month. From the first of January, 1926, to the 30th of April, 1933, he received \$81.00 per month, and from April, 1933, to date he has received \$106.00. I might explain there that he received an adjustment check two years ago for \$900.00, covering back compensa-

(Testimony of F. J. McGan.)

tion on the award made of \$81.00. He received that \$900.00 check in a lump sum in addition to these other payments. I would have to look at my file to get the exact figure on that. It is nine hundred dollars one way or the other, more or less. I have the total amount of compensation paid him by the defendant. The total amount is \$14,832.62. He is still receiving compensation at the rate of \$106.00 a month.

Cross Examination

of F. J. McGan by Mr. Molumby.

That is just compensation, and does not include the training pay that he received while at Bozeman. I have that figure here. That amounted to \$240.00. The figure that I gave is from the date of his discharge on. When he first got out of the army, according to his testimony, he did not draw the full \$30.00 and subsequently he got an adjustment check; but I have taken that into consideration in this abstract. I have those exact figures if you would like me to give them to you; but I know that [171] to be a fact. The last date on which I figured compensation includes the payment up to this month of June.

M. E. HAWKINS,

called as a witness for the defendant, being first duly sworn, upon

Direct Examination

by Mr. Brown, testified as follows:

My name is M. E. Hawkins. My residence is Billings, Montana.

Mr. MOLUMBY: We will agree, for the purpose of the record, that the court reporter is qualified to testify with reference to the matters you intend to examine him on.

I was present in Court as reporter and took the testimony of the plaintiff, Theodore Thompson, given at the time of the former trial of this case about the 3rd of April, 1935. On yesterday evening, at the request of Mr. Brown, I examined the shorthand notes that I made of the testimony given by the plaintiff at the former trial and refreshed my memory as to his testimony. Upon examination of my notes I am able to state that on the former trial this question was asked of Theodore Thompson, the plaintiff: "Have you taken any treatments for stomach trouble since you left Fort Des Moines?" His answer to that question was, "Yes, sir." He was then asked the following questions and answers:

"Q. When?

A. I have been taking that off and on about once a month.

Q. What is the treatment? [172]

A. Salts.

(Testimony of M. E. Hawkins.)

Q. You have taken no medical advice and had no medical attention, have you?

A. No, sir."

Also, this question was asked him on his cross-examination at that time: "Q. Now, with reference to your stomach condition, you told me yesterday that you had never received any treatment or consulted any doctor because of that since you left Fort Des Moines after your discharge August 13, 1919?" to which he answered, "No, sir."

This question was also asked him, "Q. You have not consulted anyone since then about stomach conditions, have you?" and his answer to that was, "No, sir."

This question was asked him, "Q. And you also stated, I believe yesterday, that the only treatment you have ever taken of any kind since you were discharged from the army on August 13, 1919, was, with reference to a stomach condition, that you took salts about once a month?" and his answer was, "Yes, sir."

This transcript which counsel has held in his hand during my examination was made by me from my official notes.

No Cross Examination.

Mr. BROWN: If the Court please, we offer in evidence the affidavit of mailing of the complaint in this action on the Attorney [173]

(Testimony of M. E. Hawkins.)

General of the United States. It is a part of the original records of these files of this Court. I might say, Your Honor, that it is offered in support of our claim or affirmative defense that the action is barred by the Statute of Limitations, and not upon the question of disagreement.

Mr. MOLUMBY: To which the plaintiff objects upon the ground that it is incompetent, irrelevant and immaterial, not competent proof of the point for which it is offered. The statute of limitations in the state of Montana are the rules of procedure which govern in this case, being an action at law. This matter was threshed out by the Court, if my information is correct, and no Bill of Exceptions saved at the time, and I do not care to give up that advantage, if we have it. And we object further, Your Honor, on the ground that the statute of limitations is not pleaded in the answer.

The COURT: Well, he has pleaded it, all right. I think I will let that go in, if it is worth anything to him. I do not think it is under the decisions. It seems to me that I have ruled on this, that it is not barred; but he has made it an issue [174] and raised it in the answer, and you have a right to make a showing under it. I will overrule the objection and let it go in for whatever it is worth.

[Omitting Title of Court and Cause.]

AFFIDAVIT OF MAILING.

State of Montana,
County of Cascade—ss.

ALICE KAUFFMAN, being first duly sworn, deposes and says: That she is a citizen of the United States, over twenty-one years of age; that on the 23 day of July, 1931, she served a copy of the complaint in the above entitled action on the Attorney General of the United States of America by depositing in the United States mail, in the Post Office at Great Falls, Montana, a copy of the complaint in the above entitled action, enclosed in an envelope directed to the Attorney General of the United States of America, Washington, D. C., on which the postage was prepaid, and which said letter was registered, the receipt therefor being hereto attached; that there is a regular and daily course of mail between the point of deposit and Washington, D. C. wherein said Attorney General of the United States resides and has his office.

ALICE KAUFFMAN

Subscribed and sworn to before me this 23 day of July, 1931. [175]

[Notarial Seal] P. G. GREENAN

Notary Public for the State of Montana. Residing at Great Falls, Montana. My commission expires June 14, 1933.

(Attached to said instrument is Receipt for Registered Article No. 1084, dated Great Falls, Montana, July 23, 1931).

Mr. BROWN: May it be stipulated that the first appearance of the United States in this case was by general demurrer, filed September 23, 1931?

Mr. MOLUMBY: We agree to it. And ask that an exception be noted as to the previous ruling, Your Honor.

The COURT: Yes, an exception may be noted.

Mr. BROWN: The defense rests, Your Honor.

D. CLAIBORN,

recalled as a witness for the plaintiff in rebuttal, having been previously duly sworn, upon

Direct Examination

by Mr. Molumby, testified as follows:

During those years covered by the totals which I gave of the deposits of Theodore Thompson made in my bank, the bank or myself as President of the bank have made loans to him right along. We have made any loans he ever asked for. He has only asked for nominal amounts. Some years he would borrow a hundred dollars or two or three hundred. He probably borrowed two hundred or two hundred fifty dollars a year, somewhere along there. As to whether I recall that at the last trial I stated that he probably [176] borrowed one hundred fifty dollars twice a year; it is possibly that amount. It

(Testimony of D. Claiborn.)

is nominal amounts, but it is somewhere in that neighborhood. Such borrowings as he made from the bank from time to time he would always deposit in this bank account and then check it out.

Cross Examination

of D. Claiborn by Mr. Brown.

I do not know if he is indebted to the bank on those borrowings now. If he is, it is a very small amount.

THEODORE THOMPSON,

the plaintiff, recalled as a witness in his own behalf in rebuttal, having been previously duly sworn, upon

Direct Examination

by Mr. Molumby, testified as follows:

I am the same Theodore Thompson who has been sworn and testified before here. The \$2500.00 that I testified that I borrowed from Carl Bue was deposited with the Citizens Bank and Trust Company at Big Timber. And the \$1800.00 that I mentioned as having been borrowed from Carl Bue was also deposited with that bank. Those deposits were made between 1919 and the present date. The money that I borrowed from Nepstad was also deposited during those dates in that particular bank. I could not say if all of the compensation that I received from the Government was really deposited in that bank. I

(Testimony of Theodore Thompson.)

might have cashed a check and bought something with it, but the biggest part of it was [177] deposited in the bank. Other than being used to buy some small item, I deposited the balance in the bank each time.

During the period from 1919 to the present date I have not on frequent occasions or on different occasions loaned money myself to other people in small amounts. The item on these ledger sheets of the bank, which is shown to me, from which Dr. Claiborn procured the total, dated and deposited on May 19, 1923, in the sum of \$2500.00, is the \$2500.00 which I borrowed from Carl Bue, or could have been that item. It was about that time that I borrowed it from Carl. It was after that that I borrowed the \$1800.00. I remember other sums that I deposited there, other than my compensation and this money that I borrowed from Bue. I remember other moneys that I got. When my father died, he left me with an estate of about \$600.00. I deposited that \$600.00 in this bank also. I have also deposited half of my bonus when I drew that two or three or four years ago, the amount of which was seven hundred fifty something. I do not think of any other sums which I deposited in that bank account in that period. At different times I have sold some stock, and have deposited the biggest part of that money in the bank. Last Fall I shipped a few cattle and it amounted to about \$350.00 and I put that amount in the bank. At that time it appears that

(Testimony of Theodore Thompson.)

I deposited the sum of \$419.00, which would be that amount. That could have included something besides the sale of the cattle. If that deposit was made in August last year, that would be the time that I made the deposit. [178]

No Cross Examination.

Mr. MOLUMBY: No further rebuttal, Your Honor.

Mr. BROWN: If the Court please, at the close of all the evidence, we desire to renew the motion for directed verdict in favor of the defendant and against the plaintiff on the following grounds and for the following reasons:

1. That the evidence is insufficient to sustain the material allegations of the plaintiff's complaint or to support a verdict in favor of the plaintiff and against the defendant, or to warrant the Court in entering a judgment in favor of the plaintiff and against the defendant, if the jury's verdict were in favor of the plaintiff.

2. That it appears from the uncontradicted evidence herein that the only disabilities suffered by the plaintiff at the time of his discharge from the army was the loss of his left leg, which, as a matter of law, does not constitute a total and permanent disability.

3. That it appears from the uncontradicted evidence herein that the plaintiff was offered

vocational training by the defendant, and that he deliberately refused to [179] accept such vocational training and that he refused to in any manner improve himself so as to enable him to earn a living and to follow a substantially gainful occupation in spite of his handicap.

4. That it does not appear from the evidence in the case that the plaintiff made any endeavor to fit himself for any work that a one-legged man can ordinarily engage in, or to engage in any work which ordinarily a one-legged man could do.

5. That it appears from the uncontradicted evidence in this case that the plaintiff has never at any time sought from the defendant or from anyone else any medical treatment or hospital treatment for his alleged stomach trouble or for the alleged injury to his right knee or his alleged nervousness or the sickness which he claims constitutes a disability in addition to the loss of his leg; and that he has refused to accept any such treatment; and that by reason of his failure to seek or receive from the defendant such medical and hospital treatment, and his refusal to accept the same, that he cannot recover in this action for any claimed sickness or disability. [180]

6. And on the further ground that it appears that the action is barred by the provisions of title 445 of section 38 of the U. S. Code.

The COURT: The motion is denied.

Mr. BROWN: May we have an exception, Your Honor?

The COURT: Yes.

Thereupon, the cause was argued to the jury by counsel for the respective parties, and the Court charged the jury as follows:

The COURT: Gentlemen of the Jury: You have heard the evidence in this case and the arguments of counsel, and as in other jury cases, it becomes the duty of the Court to advise you as to the principles of law that you are to accept and that will govern your deliberations in reaching your verdict, in the hope that they will make it easier and enable you the more readily to find a verdict in the case.

As in all of these cases, you gentlemen are the sole judges of the facts and of the credibility of witnesses, and of the weight to be given testimony; and the Court is the judge of the rules of law, as before stated.

Now, this is an action of a civil nature, and the issues are made up by the filing of a complaint and an answer. There was no reply filed, I believe.

Mr. BROWN: No; no reply was filed, Your Honor.

The COURT: And really, the issues are very simple and very plain. Of course the complaint and answer consist of several pages of typewritten matter; but after all, [181] there is really but one issue for you to determine here in this case, and

that is whether the defendant became totally and permanently disabled, as the Court will define such disability to you, at a time when his insurance was in force. That is really the main and the principal, and we might say, the only issue in this case.

Now, in all cases of this character the affirmative of the issue must be proven; and when the evidence is contradictory, the affirmative of the issue, or the burden, rests upon the plaintiff to prove his case by a preponderance of the evidence.

By a preponderance is meant the greater weight of the evidence, and that preponderance is not determined entirely on account of the number of witnesses that testify to any given fact or state of facts, although that may be taken into account too; but it is determined more by the character and nature of the testimony, and from the witness himself testifying upon the witness stand. You note whether he is candid and frank in his statements, what opportunities he may have had for observing the things about which he testifies; you note his intelligence or lack of intelligence; prejudice, if any, or lack of prejudice; relationships, if any exist; and all those things you take into account in determining where the preponderance of the evidence is to be found.

Sometimes in cases the jury find that the evidence is evenly divided. But of course, if a jury determines that the evidence is evenly divided, then the case [182] has not been established by the plaintiff by a preponderance of the evidence, and the jury would have to find for the defendant.

Now, as I said, you are the sole judges of the facts, the credibility of witnesses, and the weight to be given testimony. You see the different witnesses come upon the witness stand. You note their manner and demeanor while testifying. You note whether they are frank or whether they are evasive, whether they are forgetful of important things—the things that you may deem important in the testimony and as bearing upon the issues in the case. You note what relationships exist, if any. You note whether the witness appears to have any interest in the outcome of the case. All of those things you take into account in determining what you will do with the testimony of that particular witness.

There is a presumption that the witness is speaking the truth; but this presumption may be repelled by his manner of testifying, by contradictory evidence, or by evidence affecting his credibility. And as to that, of course, you are the sole judges.

Now, there are three modes of impeaching a witness. Of course, the first is by showing a different statement made on some other occasion or by contradicting his present testimony upon the witness stand, or by evidence of bad reputation. If you believe that any witness has wilfully testified falsely to a material matter in the cause, you have a right to distrust his testimony throughout, [183] and to disregard it altogether, unless you find corroboration of some parts of it, either in the testimony of other witnesses or in the circumstances which you have observed during the course of the trial.

Now, of course, no juror has the right arbitrarily to disregard the testimony of any witness not impeached in some of the modes that the Court has suggested to you, providing that testimony is reasonable and consistent with the other facts and circumstances in the case.

Now, sometimes a jury are troubled in trying to determine what they will do because of the large number of witnesses testifying on one side, as opposed to a small number on the other. Well, as before stated, in respect to preponderance of evidence, that is not alone determined by the number of witnesses. You are advised that the direct evidence of one credible witness is sufficient to establish a given fact or state of facts in this case; and the Court means, of course, by a credible witness one in whom the jury have confidence—a witness you believe, who inspires your trust and confidence because of his testimony.

There has been introduced in this case what we term in law expert or opinion evidence. Now, irrespective of the testimony of expert witnesses, as we call them, who come in here and testify because of their special knowledge of certain facts, professional men such as doctors and surveyors and engineers, etc., whatever they may say to you, whatever they may give to you in the way of testimony, you will remember that the ultimate weight of that testimony is [184] with the jury the same as that of any other witness who may testify in the case. And you gentlemen are not required to surrender

your own judgment, if you consider it based upon credible evidence, to that of any witness testifying in this cause as an expert.

Of course, where an expert testifies to facts within his personal knowledge, why, his testimony is like that of any other witness. But whatever weight you will give to the testimony of expert witnesses you will give by reason of a consideration of all of the testimony in the case, taken in connection with the expert testimony.

Gentlemen, the Court will remind you that any colloquy or dispute that may have occurred during the trial of this case, either between counsel or between the Court and counsel, which is not based upon the evidence in the case, you will wholly disregard.

You will remember that only the evidence submitted here in this court room and on this trial, either through the testimony of the witnesses or the exhibits and documents that have been introduced here in this case, are to be considered by you as evidence in this case. And you are not to consider anything that you may have heard or read on the outside, but be guided solely and entirely by the evidence here.

You will also remember that any evidence which the Court may have excluded, or which was stricken from the record, you will also disregard.

Now then, there are certain special instructions [185] here bearing particularly upon the issues here involved in this case which the Court

will give, in addition to the general instructions that the Court gives in all of these civil actions, and many of them in criminal actions as well.

You are instructed, Gentlemen, that this is an action brought under the War Risk Insurance Act, and is in the nature of an action on a contract of insurance. For the purpose of determination of this action, it must be taken as conceded that the plaintiff did enter into a contract with the defendant to insure him in the sum of ten thousand dollars against death or total permanent disability suffered or contracted while said policy of insurance was in effect, which policy was payable upon maturity in the sum of \$57.50 per month. And if you believe that Theodore Thompson became totally and permanently disabled on or before the 13th day of August, 1919, then his insurance matured upon the date he became totally and permanently disabled as defined in these instructions, and would therefore be due and payable to this plaintiff from the date upon which he became so totally and permanently disabled at the rate of \$57.50 per month for each and every month elapsing since the date he became totally and permanently disabled.

Have you figured out that amount in your forms of verdict?

Mr. MOLUMBY: The form of verdict reads "in the amount of the installments accruing from and after" the date, [186] Your Honor.

The COURT: Well, that would be sufficient to guide us.

You are instructed that the statute upon which this action is based reads as follows—that portion which is material, of section number 300 of the War Risk Insurance Act: “In order to give to every commissioned officer and enlisted man, and to every member of the army nurse corps female, and of the navy corps female, when employed in the active service under the War Department or Navy Department, protection for themselves and their dependents, the United States, upon application to the Bureau, and without medical examination, shall grant United States Government life insurance, convertible insurance, against the death or total permanent disability of such person in any multiple of \$500.00, and not less than \$1,000.00 or more than \$10,000.00, upon the payment of the premiums as hereinafter provided. Such insurance must be applied for within 120 days after enlistment or after entrance into or employment in the active service and before discharge or resignation.”

Justice Holmes, of the United States Supreme Court, has given voice to an expression in an opinion rendered in reference to the War Risk Insurance Act which may throw some light on this case, which is as follows:

“The certificate of insurance provided in terms that it should be ‘subject in all respects to the provision of such act (that is to say, the act of 1917), of any amendments thereto, and of all regulations thereunder, now in [187] force or hereafter adopted, all of which, together with the application for this

insurance, and the terms and conditions published under authority of the Act, shall constitute the contract.' These words must be taken to embrace changes in the law no less than changes in the regulations. The form was established by the Director with the approval of the Secretary of the Treasury and on the authority of article 1, §1, and article 4, §402, of the Act, which, we have no doubt, authorized it. The language is very broad and does not need precise discussion when the nature of the plan is remembered. The insurance was a contract, to be sure, for which a premium was paid, but it was not one entered into by the United States for gain. All soldiers were given a right to it and the relation of the Government to them, if not paternal, was at least avuncular. It was a relation of benevolence established by the Government at considerable cost to itself for the soldier's good. It was a new experiment in which changes might be found necessary, or at least, as in this case, feasible more exactly to carry out his will. If the soldier was willing to put himself into the government's hands to that extent no one else could complain. The only relations of contract were between the Government and him."

You are instructed that the contract of insurance sued on herein insured the plaintiff against total permanent disability, and that therefore the occasion, source or cause of the plaintiff's disability, if you find that he has one, is immaterial. The plaintiff's injuries, [188] exposure and illness before the lapse of his policy (if you find from a pre-

ponderance of the evidence in this case that he sustained injuries, suffered exposure or had illness) and his condition in subsequent years have significance, if any, only to the extent that they tend to show whether he was in fact totally or permanently disabled during the life of the policy or prior to the first day of October, 1919, the date on which the said insurance policy lapsed by reason of the plaintiff's failure to pay the premiums necessary to continue the same in force.

You are instructed that the policy of insurance herein sued on did not insure the plaintiff for inability to follow the occupation of a farmer, or for inability to follow any specific occupation whatsoever; but that it insured him only in the event that during its life he became totally and permanently disabled from following with reasonable regularity any substantially gainful occupation.

You are instructed that the burden is on the plaintiff in this case to prove to your satisfaction by a preponderance of the evidence that he was, on the 1st day of October, 1919, the day upon which his policy of insurance lapsed, totally and permanently disabled from following any substantially gainful occupation or from following with reasonable regularity any substantial gainful occupation; and that his condition was such on that date that it was reasonable to presume that he would continue for the rest of his life to be so totally and permanently disabled. And unless you so find, your verdict must be for the de- [189] fendant.

You are instructed that as a matter of law the loss of a leg in itself does not render one totally and permanently disabled within the meaning of the insurance contract sued on herein.

You are instructed that plaintiff's conduct since the first day of October, 1919, reflects in his own opinion as to whether he was totally and permanently disabled at the time of the lapse of the policy of insurance on that date, and his failure earlier to commence his action on such policy shows that for thirteen years he did not believe he was totally and permanently disabled when he allowed his policy to lapse.

You are further instructed that in the absence of clear and satisfactory evidence on behalf of the plaintiff, explaining, excusing or justifying such long delay before commencing this action, the plaintiff's long delay in commencing such action is to be taken as strong evidence that he was not totally and permanently disabled before the policy lapsed.

You are instructed that you are to consider the term "total disability" as any impairment of mind or body which renders it impossible for the insured to follow continuously a substantially gainful occupation without seriously impairing his health; and that total disability is to be considered by you as permanent when it is of such a nature as to render it reasonably certain that it will continue throughout the lifetime of the insured. [190]

You are instructed that total disability does not mean helplessness or complete disability. But it in-

cludes more than that which is partial. Permanent disability means that which is continuing, as opposed to that which is temporary. Separate and distinct periods of temporary disability do not constitute that which is permanent. The mere fact that one has done some work after the lapse of his policy is not of itself sufficient to defeat his claim to permanent total disability. He may have worked when really unable, at the risk of injuring his health or life. If the plaintiff is able to follow a gainful occupation only spasmodically, with frequent interruptions due to his disability, or if his periods of work, though more or less regular and continuous, were done at the risk of his injuring his health or life, he was then totally and permanently disabled within the meaning of his contract and the War Risk Insurance Act.

But on the other hand, if he was able to follow a gainful occupation regularly, continuously, and without frequent interruptions because of his disability, then he would not be totally and permanently disabled.

You are instructed that if you find from the evidence that Theodore Thompson became totally and permanently disabled as defined in *this* instructions, on or prior to the date to which his insurance was paid, it is immaterial whether the disease, injuries or disabilities causing his total permanent disability were contracted prior to the date of his enlistment in the army or during the time he was in [191] the army, or whether it was contracted subsequent

to his discharge from the army. If he became totally and permanently disabled as those terms are in these instructions defined, at a time on or prior to August 13, 1919, his insurance had matured and become payable.

You are instructed that in determining whether the said Theodore Thompson was totally disabled, you may take into consideration his previous occupation, learning and experience in so far as it is shown in evidence.

You are instructed that if you should find from the evidence that Theodore Thompson became totally and permanently disabled as defined in these instructions from on or prior to August 13, 1919, and has remained so totally and permanently disabled thereafter, then his insurance did not lapse on October 1, 1919, nor on any other date, for non-payment of premiums.

You are instructed that a thing once proven to exist is presumed to continue as long as is usual with things of that nature.

You are instructed, for the purpose of this action, that the plaintiff must be taken to have been in sound physical condition when he enlisted in the defendant's army.

The Court will again call your attention to the fact that when you retire and examine the pleadings, you will run across the five thousand dollar policy which was set up in the answer, which you are to disregard. That is not under consideration in this case at all, but only the [192] policy of

insurance taken out when he enlisted in the army, which these instructions relate to; the only issue being permanent and total disability.

Now Gentlemen, of course you will consider all of the evidence very carefully and analyze it to the very best of your ability, guided by the evidence, of course, and arguments of counsel and the instructions of the Court. You will find, of course, in the analysis of the testimony that in the beginning this defendant lost his left leg. The member was so severely wounded in battle that it had to be amputated. There will be no doubt in your minds in that respect, of course. And you will say from the evidence, following those injuries and during his hospitalization, that he was probably totally disabled for a period of a year, or in that neighborhood at any rate.

Now then, it is for you to say from all of the evidence in the case, including the evidence of the injury and this period of total disability, and all of the subsequent proof, whether or not you believe he has been totally disabled ever since, and that he is permanently disabled. Those are facts for you to determine.

You will note, of course, that the disability and illness and injuries and all depend very largely—the nature and character and extent of them, depend very largely upon the testimony of the plaintiff himself and what he says about himself; what he said about being shell shocked. Although, another comrade said that there was gas in that area

all that time, bearing corroboration. And of course [193] you will find corroboration of his testimony in the testimony of the physicians and in the testimony of his friends and neighbors down where he lives. And you will take that into account and say how far that sustains him in his own testimony. And you will also take into account the documentary evidence that has been admitted here, showing perhaps a contrary statement or inconsistent statements at other periods of time during the last thirteen years, or since his injury was received, or since his insurance policy lapsed. And you are to take those things into account, too.

Now, it is the duty of the jury to reconcile contradictions and inconsistencies, in so far as they are able to do so. Where you come to the point where you feel that it is almost impossible to reconcile them, then the jury have got to review the evidence and they must rely upon the testimony and the evidence in the case that they deem worthy of belief. You must pick it out here and there, and then rely upon your judgment, under the rules the Court has given you, reconciling those conflicts wherever you can do so; but giving the evidence, after your final deliberation over it, such weight as you finally think it ought properly to receive.

It takes twelve of your number to agree on any verdict. You should select a foreman, and he will sign your verdict when you agree. You may now retire to deliberate.

Are there any exceptions?

Mr. BROWN: The defendant objects and excepts [194] to the refusal of the Court to give Government's proposed instruction Number 1.

The COURT: Very well. You may retire, Gentlemen. Forms of verdicts will be given you, Gentlemen, and the pleadings in the case, and you may examine the exhibits that have been introduced in evidence. If you find any use for them, they will be available.

Defendant's proposed Instruction Number 1 refused by the Court is as follows:

You are directed to return your verdict in favor of the defendant and against the plaintiff. [195]

Thereafter, and on the 25th day of June, 1936, the jury returned into Court with its verdict; which, omitting title of Court and Cause, is as follows:

VERDICT.

We, the Jury, in the above entitled cause, find for the plaintiff, and against the defendant, and assess his damages in the amount of the installments of War Risk Insurance accruing from and after the 13th day of August, 1919.

JAMES NOYES,
Foreman.

Whereupon, the following proceedings were had:

Mr. McGAN: Let the record show, if Your Honor please, that by agreement of counsel the defendant is granted ninety days in addition to the time allowed by law to prepare, serve and file its bill of exceptions herein?

The COURT: Very well.

Mr. McGAN: And would Your Honor please make an order extending the term in which the cause is tried to and including the day on which defendant's bill of exceptions is finally settled?

The COURT: Very well. [196]

AND NOW, Within the time allowed by law and the extension of time granted by the Court, defendant prepares and files herein its proposed bill of exceptions, embodying an order of the Judge granting the defendant ninety days within which to prepare, serve and file its bill of exceptions herein, stipulation of counsel relating thereto and an order of the Judge continuing the term at which the above-entitled cause was tried to and including the day on which defendant's bill of exceptions is finally settled; embodying all the rulings of the Court and proceedings had on the trial of said cause, the exhibits offered and received, and prays that the

same be allowed, signed, settled and filed as defendant's bill of exceptions.

Dated this 10th day of September, 1936.

JOHN B. TANSIL,

United States Attorney for
the District of Montana,

By R. LEWIS BROWN

Assistant U. S. Attorney.

FRANCIS J. McGAN

Attorney, Department of
Justice.

Attorneys for Defendant.

Service of the above and foregoing proposed Bill of Exceptions is admitted and a copy thereof received this 10th day of Sept., A. D. 1936, after lodging.

MOLUMBY, BUSHA & GREENAN,

By LOY J. MOLUMBY

Attorneys for Plaintiff. [197]

STIPULATION.

IT IS HEREBY STIPULATED AND AGREED by and between the plaintiff in the above entitled action, through his attorneys, Molumby, Busha & Greenan, and the defendant through its attorneys, that the above and foregoing bill of exceptions is true, full and correct; that it contains all the evidence introduced, proceedings had and exceptions taken in the trial of said action, and that it may be signed, settled and allowed by the

Judge who tried the case as a full, true and correct bill of exceptions herein.

MOLUMBY, BUSH & GREENAN,

By

Attorneys for Plaintiff.

JOHN B. TANSIL,

United States Attorney for
the District of Montana,

By R. LEWIS BROWN

Assistant U. S. Attorney.

FRANCIS J. McGAN

Attorney, Department of
Justice.

Attorneys for Defendant. [198]

CERTIFICATE OF JUDGE.

The undersigned Judge, who tried the above entitled action, HEREBY CERTIFIES that the above and foregoing is a full, true and correct bill of exceptions in said action; and that it contains all the evidence and exhibits offered and introduced, proceedings had and exceptions taken on the trial of said action. AND IT IS ORDERED, and this does ORDER, that the above and foregoing be approved, allowed and settled as a full, true and correct bill of exceptions herein within the judgment term or proper extension thereof.

Sept. 25, 1936.

CHARLES N. PRAY

Judge.

[Endorsed]: Filed Sept. 25, 1936. [199]

Thereafter on September 25, 1936, Assignment of Errors was duly filed herein, which is in the words and figures following, towit: [200]

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS.

COMES NOW the United States of America, the defendant in the above entitled action, by its attorneys, and in connection with its petition for appeal says that in the record and proceedings had in the above entitled action, manifest error has intervened to the prejudice of the defendant, upon which it will rely in the prosecution of its appeal herein, to-wit:

I.

The Court erred in denying defendant's motion, made at the conclusion of plaintiff's case, to which action of the Court defendant then and there duly excepted, as follows:

Mr. MOLUMBY: Plaintiff rests.

Thereupon, without the presence of the jury, the defendant submitted its motion for a directed verdict, as follows:

Mr. BROWN: Comes now the defendant, at the close of the evidence of the plaintiff, and moves the Court to direct a verdict in favor of the defendant and against the plaintiff, on the following grounds and for the following reasons:

1. That the evidence is insufficient to sustain the material allegations of the [201] plaintiff's

complaint or to support a verdict in favor of the plaintiff and against the defendant; or to warrant the Court in entering a judgment in favor of the plaintiff and against the defendant, if the jury's verdict were in favor of the plaintiff.

2. That it appears from the uncontradicted evidence herein that the only disabilities suffered by the plaintiff at the time of his discharge from the army was the loss of his left leg, which, as a matter of law, does not constitute a total and permanent disability.

3. That it appears from the uncontradicted evidence herein that the plaintiff was offered vocational training by the defendant and that he deliberately refused to accept such vocational training, and that he refused to in any manner improve himself so as to enable him to earn a living and to follow a substantially gainful occupation, in spite of his handicap.

4. That it does not appear from the evidence in the case that the plaintiff made any endeavor to fit himself for any work that a one-legged man can ordinarily engage in or to engage in any work which ordinarily a one-legged man could do.

5. That it appears from the uncontradicted evidence in this case that the plaintiff has never at any time sought from the defendant, or from anyone else, any medical [202] treatment or hospital treatment for his alleged stomach

trouble or for the alleged injury to his right knee or his alleged nervousness or sickness which he claims constitutes a disability in addition to the loss of his leg; and that he has refused to accept any such treatment; and that by reason of his failure to seek or receive from the defendant such medical and hospital treatment, and his refusal to accept the same that he cannot recover in this action for any claimed sickness or disability.

The COURT: * * * I will overrule the motion and you may bring in the jury.

Mr. BROWN: May we have an exception, Your Honor?

The COURT: Yes, you may have an exception.

II.

The Court erred in sustaining plaintiff's objection to defendant's offer of Exhibit No. 21, and refusing to receive the same in evidence, to which action of the court defendant then and there duly excepted, as follows:

Mr. BROWN: We offer in evidence as a part of the original file of the Government in this case the Defendant's Exhibit 21.

Mr. MOLUMBY: To which we object upon the ground and for the reason that there is no proper foundation laid; there is no application or anything to show that it was ever communicated to or received by the plaintiff or anyone. It is an unsigned typewritten piece of paper, by someone unknown. [203]

The COURT: What does it purport to be?

Mr. BROWN: It is a carbon copy of a letter, Your Honor.

Mr. MOLUMBY: On the further ground it is a self-serving declaration.

Mr. BROWN: I can call Mr. McGan, but it is a part of the record in this case, Your Honor.

The COURT: Well, I think perhaps counsel's objection would be good under the circumstances.

Mr. BROWN: As to no identification?

The COURT: Yes; that is a copy, doesn't show a signature at all.

F. J. McGAN,

called as a witness in behalf of the defendant, being first duly sworn, upon

Direct Examination

by Mr. Brown, testified as follows:

My name is F. J. McGan and my residence is Butte, Montana. My occupation is Attorney for the Department of Justice. As such Attorney for the Department of Justice, I have in my official custody now certain original files and documents of the United States concerning this particular case and the compensation case of Theodore Thompson, the plaintiff in this action.

Mr. MOLUMBY: If the Court please, our objection don't go to the point that it is a part of the files. We will concede that it is a part of the files.

(Testimony of F. J. McGan.)

The COURT: It is a copy of an original record. Now they will have to account for the loss of the original. Whom is it addressed to? [204]

Mr. BROWN: It is addressed to the plaintiff in this action, if the Court please.

The COURT: Then you will concede that this is a copy of the original record of the Government in this action?

Mr. MOLUMBY: We will concede that it is in the file. That is as far as we can go. But that does not give us an opportunity to cross-examine the person who made it, and there is nothing to show that it was ever received by the defendant.

The COURT: That is true. You may have an exception to the ruling.

THEODORE THOMPSON,

recalled as a witness for the defendant, having been previously duly sworn, upon

Direct Examination

by Mr. Brown, testified as follows:

In January, 1920, my post office was Grey Cliff, Montana. I do not remember if prior to January 16, 1920, I had been examined by Dr. T. V. Moore, of Billings, Montana, or not. I had been down to Billings for examination by several different doctors, but I do not remember the names of them. I do not remember whether I was examined by Dr.

(Testimony of Theodore Thompson.)

Moore or not; I could not say for sure. I cannot read the Defendant's Exhibit 21. I could not say whether in 1920 I received a letter from a H. M. Bracken, a Surgeon in the District Headquarters, in the employ of the United States Government at St. Paul, Minnesota, in which he said that I should be under hospital care, informing me that they were ready to provide it at the expense of the United States Government, and asking me if I had applied for compensation. I do not remember if I received such a letter. I won't say [205] that I did, and I won't say that I did not receive such a letter, because I do not remember. I do say that my address was Grey Cliff, Montana, at that time, and that I had been in Billings at that time to be examined by some Government doctor.

Mr. BROWN: We renew the offer, if the Court please (Defendant's Exhibit 21), as part of the original file of the Government and under the presumption of the name and identity of the address of this plaintiff, it being a copy of a letter that was mailed to him. The original would not be in the possession of the United States Government.

Mr. MOLUMBY: To which we object on the grounds heretofore stated in our objection to its offer in the first instance.

The COURT: Well, I think I will have to sustain the objection.

(Testimony of Theodore Thompson.)

Mr. BROWN: And may we have an exception, if the Court please?

The COURT: Yes.

DEFENDANT'S OFFERED EXHIBIT
NUMBER 21.

is in words and figures as follows:

Jan. 16, 1920.

From: District Headquarters,
District #10, U. S. P. H. S.,
744 Lowry Bldg., St. Paul, Minn.

To: Theodore Thompson,
Greycliff, Montana.

Subject: Hospital care.

In Nov. Dr. T. V. Moore of Billings examined you and reported you as suffering from chronic intestinal [206] infection. He advises that you should be under hospital care but stated you would not accept. It seems to me you ought to be under treatment. We are ready to provide it at the expense of the Federal Government. Have you applied for compensation? If not, you should do so filling out form 526 and send same to this office with certified copy of your discharge papers.

H. M. BRACKEN,
Surgeon (Reserve)

III.

The Court erred in sustaining plaintiff's objection to the introduction in evidence of defendant's

Exhibit No. 22, to which action of the Court defendant then and there duly excepted as follows:

Mr. BROWN: We offer in evidence, if the Court please, the Defendant's Exhibit 22.

Mr. MOLUMBY: To which we object on the same grounds stated in our objection to the offer of Defendant's Exhibit 21. We object on the same grounds, that it is a copy, from the same party, written exactly the same as the other.

The COURT: Let me see those letters? Do you mean to say that you do not remember any transportation being sent to you by the Government to go somewhere for treatment?

A. No sir; I don't.

The COURT: Where were those letters? Is that a part of the A. G. O. record?

Mr. McGAN: It is a part of the compensation file, Your Honor.

The COURT: I expect if it came up that way, in the Adjutant General's Office, such as have been received by the Courts—all sorts of communications can go in. But there are some separate and distinct objections to the admission of this form of a letter in evidence, a copy. [207]

Mr. MOLUMBY: There is a distinction between the Adjutant General's Office, Your Honor, and this office. As to the Adjutant General's Office, we have a special statute making them admissible.

The COURT: Yes, making them admissible. I shall have to sustain the objection to the introduction of that exhibit.

Mr. BROWN: May we have an exception, if the Court please?

DEFENDANT'S OFFERED EXHIBIT
NUMBER 22.

is in words and figures as follows:

June 21, 1920.

From: Supervisor, District #10,
Lowry Bldg., St. Paul, Minn.

To: Theodore Thompson,
Greycliff, Mont.

Subject: Hospital care.

Under date of May 21st you were examined by Dr. P. L. Greene of Livingston, Mont. who advises hospital care. Enclosed find transportation from Greycliff, Mont. to Minneapolis, Minn. with hospital card admitting you to St. Barnabas Hospital where you will be under the care of Dr. J. F. Avery.

Transportation and meal requests should be used on trip only. Kindly return all unused transportation and meal requests to this office for cancellation.

By direction of the District Supervisor.

H. M. BRACKEN,
Surgeon (Reserve).

Copy Dr. Avery

Copy St. Barnabas Hos. [208]

IV.

The Court erred in sustaining plaintiff's objection to the introduction in evidence of defendant's Exhibits No. 3 and 4, to which action of the Court defendant then and there duly excepted, as follows:

Mr. BROWN: These are Defendant's Exhibits 3 and 4, if the Court please, and we now offer them in evidence.

Mr. MOLUMBY: To which we object on the same ground.

The COURT: It will have to be sustained.

Mr. BROWN: Your Honor, may we have an exception to the ruling of the Court, if you please?

DEFENDANT'S OFFERED EXHIBIT
NUMBER 3.

is in words and figures as follows:

September 20th, 1920.

Mr. Theodore Thompson,
Grey Cliff, Montana.

Dear Sir:

We have in our file a statement to the effect that you would be prepared to continue your training this fall. The Fall term at the College of Agriculture, Bozeman, Montana, starts on September 28th. We are therefore enclosing you transportation for the purpose of reporting in time to start your training when the school opens. Please report to

Mr. Wm. F. Schoppe who will help you get started. Use this letter as an introduction.

A letter authorizing you to travel is enclosed. [209]

Kindly fill out the enclosed dependency affidavit and return to this office as soon as possible. Also fill out the enclosed blank showing the date you enter training and mail same in the enclosed envelope which requires no postage.

Yours very truly,

O. W. JOHNSON,

Ass't to C. A. Zuppann,

District Vocational Officer.

DEFENDANT'S OFFERED EXHIBIT
NUMBER 4

is in words and figures as follows:

Helena, Montana,
Oct. 20, 1920.

Mr. Theodore Thompson,
Grey Cliff, Montana.

Dear Mr. Thompson:

Under date of September 20th, the District Office in Minneapolis sent you a letter, together with several forms and transportation request, authorizing you to enter training at the College of Agriculture, Bozeman, Montana.

These have all been returned and forwarded to this office. As you gave no explanation as to why

same were returned and the reason for not desiring to take the training offered you, we are writing to ask that you kindly advise this office as soon as possible, using the enclosed self addressed envelope which requires no postage, for your reply, your reason for not accepting this training.

We assume however, that you care to avail yourself of this vocational training at some later date, [210] if you are not at the present time able to do so, and we would request that you kindly advise this office a week or ten days in advance as to when you will be able to commence your training, and transportation will then be forwarded to you to your place of training.

Assuring you of our personal interest in your case and hoping we may hear from you in the very near future in regards to the above, we are,

Yours very truly,

C. A. ZUPPANN

District Vocational Officer

By: LEIF FREDERICKS

Local Supervisor

Enclosure.

V.

The Court erred in denying defendant's motion for a directed verdict, made at the conclusion of all the evidence, to which action of the Court defendant then and there duly excepted, as follows:

Mr. MOLUMBY: No further rebuttal, Your Honor.

Mr. BROWN: If the Court please, at the close of all the evidence, we desire to renew

the motion for directed verdict in favor of the defendant and against the plaintiff on the following grounds and for the following reasons:

1. That the evidence is insufficient to sustain the material allegations of the plaintiff's complaint or to support a verdict in favor of the plaintiff and against the defendant, or to warrant the Court in entering a judgment in favor of the plaintiff and against the defendant, if the jury's verdict were in favor of the plaintiff.

[211]

2. That it appears from the uncontradicted evidence herein that the only disabilities suffered by the plaintiff at the time of his discharge from the army was the loss of his left leg, which, as a matter of law, does not constitute a total and permanent disability.

3. That it appears from the uncontradicted evidence herein that the plaintiff was offered vocational training by the defendant, and that he deliberately refused to accept such vocational training and that he refused to in any manner improve himself so as to enable him to earn a living and to follow a substantially gainful occupation in spite of his handicap.

4. That it does not appear from the evidence in the case that the plaintiff made any endeavor to fit himself for any work that a one-legged man can ordinarily engage in, or to engage in any work which ordinarily a one-legged man could do.

5. That it appears from the uncontradicted evidence in this case that the plaintiff has

never at any time sought from the defendant or from anyone else any medical treatment or hospital treatment for his alleged stomach trouble or for the alleged injury to his right knee or his alleged nervousness or the sickness which he claims constitutes a disability in addition to the loss of his leg; and that he has refused to accept any such treatment; and that by [212] reason of his failure to seek or receive from the defendant such medical and hospital treatment, and his refusal to accept the same, that he cannot recover in this action for any claimed sickness or disability.

6. And on the further ground that it appears that the action is barred by the provisions of Sec. 445 of Title 38 of the U. S. Code.

The COURT: The motion is denied.

Mr. BROWN: May we have an exception, Your Honor?

The COURT: Yes.

VI.

The Court erred in refusing to give to the jury defendant's requested instruction No. 1, as follows:

You are directed to return your verdict in favor of the defendant and against the plaintiff,

the defendant's exception being as follows:

The COURT: Are there any exceptions, Mr. Brown?

Mr. BROWN: The defendant objects and excepts to the refusal of the Court to give the Government's proposed instruction No. 1.

The COURT: Very well. You may retire, gentlemen.

VII.

The evidence is insufficient to justify the verdict.

VIII.

There is nothing in the evidence in this case tending to show that at the time the insurance upon which the plaintiff bases his claim lapsed he was permanently and totally disabled. [213]

IX.

The verdict is against law.

X.

The Court erred in entering judgment in favor of the plaintiff and against the defendant.

XI.

The Court was without jurisdiction to enter the judgment that it entered in this action.

WHEREFORE, for such errors, defendant prays that the judgment of the District Court of the United States for the District of Montana, Billings Division, dated July 18, 1936, be set aside and vacated and that this case be remanded for a new trial.

JOHN B. TANSIL

Attorney of the United States,
in and for the District of
Montana.

R. LEWIS BROWN

Assistant Attorney of the
United States, in and for
the District of Montana.

FRANCIS J. MCGAN

Attorney, Department of Justice.

Service of the above and foregoing assignment of errors acknowledged and copy thereof received at Great Falls, Montana this 25th day of September, 1936.

MOLUMBY, BUSHA & GREENAN
Great Falls, Montana,

By A. KAUFFMAN

(Attorneys for Plaintiff
and Appellee)

[Endorsed]: Filed Sept. 25, 1936. [214]

Thereafter, on September 25, 1936, Petition for Appeal was duly filed herein, which is in the words and figures following, to-wit: [215]

[Title of Court and Cause.]

PETITION FOR APPEAL.

The above named defendant, feeling itself aggrieved by the rulings of the Court during the trial of the above entitled action and the order and final judgment entered therein on the 18th day of July, 1936, does hereby appeal from the said rulings of the Court and said order and judgment, and each and every part thereof to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the Assignment of Errors presented herewith, and said defendant prays that its appeal be allowed and citation be issued as provided by law, and that a transcript of the

record, proceedings and papers upon which said judgment and order was based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit, as by law and the rules of said Court in such cases made and provided.

JOHN B. TANSIL,

United States Attorney for
the District of Montana,
Butte, Montana,

R. LEWIS BROWN,

Assistant United States Attor-
ney, District of Montana,
Butte, Montana,

FRANCIS J. McGAN,

Attorney, Department of
Justice,
Butte, Montana,

(Attorneys for Defendant
and Appellant.) [216]

Service of the above and foregoing Petition for Appeal acknowledged and copy thereof received at Great Falls, Montana, this 25 day of Sept., 1936.

MOLUMBY, BUSHA &
GREENAN,

Great Falls, Montana,

By A. KAUFFMAN,

(Attorneys for Plaintiff and
Appellee.)

[Endorsed]: Filed Sept. 25, 1936. [217]

Thereafter, on September 25, 1936, Order Allowing Appeal was duly filed herein, which is in the words and figures following, to-wit: [218]

[Title of Court and Cause.]

ORDER ALLOWING APPEAL.

The defendant in the above entitled action having filed therein its petition that an appeal be allowed to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment made, rendered and entered of record in the above entitled Court and action on July 18, 1936, and that a citation be issued as provided by law and a transcript of the records, proceedings and papers upon which said order and judgment was based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit, as by law and the rules of said Court in such cases made and provided and being fully advised of the law and the facts and it appearing therefrom to be a proper case therefor, Now, Therefore:

IT IS HEREBY ORDERED that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the order and judgment heretofore entered and filed herein on the 18th day of July, 1936, as aforesaid, be and the same is hereby allowed; and,

IT IS FURTHER ORDERED that a certified transcript of the record, testimony, exhibits, stipulations, said order and judgment, and all proceedings in the above entitled action be forthwith trans-

mitted by the Clerk of the above entitled Court to said United States Circuit Court of Appeals for the Ninth Circuit. [219]

Done in open court at Great Falls, Montana, this 25 day of Sept., 1936.

CHARLES N. PRAY,
Judge of the District Court
of the United States,
District of Montana.

Service of the above and foregoing Order acknowledged and copy thereof received at Great Falls, Montana, this 25 day of Sept., 1936.

MOLUMBY, BUSH &
GREENAN,
Great Falls, Montana,
By A. KAUFFMAN,
(Attorneys for Plaintiff and
Appellee.)

[Endorsed]: Filed Sept. 25, 1936. [220]

Thereafter, on September 25, 1936, Citation on Appeal was duly filed herein, the original Citation being hereto annexed and being in the words and figures following, to-wit: [221]

[Title of Court and Cause.]

CITATION.

YOU ARE HEREBY CITED AND ADMONISHED to be and appear before the United States

Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal in the above entitled action of record in the office of the Clerk of the District Court of the United States for the District of Montana, Billings Division, wherein the United States of America is appellant and Theodore Thompson is appellee, to show cause, if any there be, why the judgment rendered and entered against the defendant and appellant as in said appeal mentioned should not be corrected and why speedy justice should not be done to the parties hereto in that behalf.

WITNESS, the Honorable Charles N. Pray, Judge of the District Court of the United States for the District of Montana, this 25th day of September, 1936.

CHARLES N. PRAY,

Judge of the District Court
of the United States,
District of Montana.

ATTEST my hand and the seal of the Court at Great Falls, Montana, this 25 day of Sept., 1936.

[Seal]

C. R. GARLOW,

Clerk of the above entitled
Court.

By C. G. KEGEL,

Deputy Clerk of said Court.

[222]

Service of the above and foregoing Citation admitted and copy thereof received at Great Falls, Montana, this 25 day of Sept., 1936.

MOLUMBY, BUSH &
GREENAN,
Great Falls, Montana,
By A. KAUFFMAN,
(Attorneys for Plaintiff and
Appellee.)

[Endorsed]: Filed Sept. 25, 1936. [223]

Thereafter, on September 25, 1936, Praecipe for Transcript of Record was duly filed herein, which is in the words and figures following, to-wit: [225]

[Title of Court and Cause.]

PRAECIPE.

To the Clerk of the Above Entitled Court:

Sir:

Please prepare and certify record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit in the above entitled cause and include therein the following papers and documents:

1. Complaint;
2. Summons and Marshal's return thereon;
3. Answer;
4. Verdict;
5. Judgment;
6. Clerk's minute entries;

7. Bill of Exceptions;
8. Assignment of Errors;
9. Petition for Appeal;
10. Order Allowing Appeal;
11. Stipulation and Order for Diminution of Record;
12. Citation;
13. Clerk's Certificate;
14. Defendant's requested Instruction No. 1 not given by the Court; and,
15. This Praecipe. [226]

Dated this 25 day of September, 1936.

JOHN B. TANSIL,

United States Attorney for
the District of Montana,
Butte, Montana,

R. LEWIS BROWN,

Assistant United States Attor-
ney, District of Montana,
Butte, Montana,

FRANCIS J. McGAN,

Attorney, Department of
Justice,
Butte, Montana,

(Attorneys for Defendant
and Appellant.)

[Endorsed]: Filed Sept. 25, 1936. [227]

Thereafter, on September 28, 1936, Stipulation and Order for Diminution of Record was duly filed herein, which is in the words and figures following, to-wit: [228]

[Title of Court and Cause.]

STIPULATION FOR DIMINUTION OF
RECORD.

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above entitled action that in the printing of the transcript of the record therein the title of the Court and the title of the cause on the pleadings and documents need not be printed in full, but may be entitled thus,—“Title of Court and Cause,” and that the endorsement on each of such papers and documents, except the filing endorsement, may also be omitted.

Dated Sept. 25, 1936.

JOHN B. TANSIL,

United States Attorney for
the District of Montana,
Butte, Montana,

R. LEWIS BROWN,

Assistant United States Attor-
ney, District of Montana,
Butte, Montana,

FRANCIS J. MCGAN,

Attorney, Department of
Justice,

Butte, Montana,

(Attorneys for Defendant
and Appellant.)

MOLUMBY, BUSHA &
GREENAN,
Great Falls, Montana,
By LOY J. MOLUMBY,
(Attorneys for Plaintiff and
Appellee.)

It is so ordered:

CHARLES N. PRAY,
Judge of the United States
District Court,
District of Montana.

[Endorsed]: Filed Sept. 28, 1936. [229]

Thereafter, on October 16, 1936, Order extending time to file transcript of record in Circuit Court of Appeals was duly entered herein, which is in the words and figures following, to-wit: [230]

[Title of Court and Cause.]

ORDER.

Upon application of the appellant and for good cause appearing IT IS ORDERED that the time for docketing the transcript on appeal in the United States Circuit Court of Appeals for the Ninth Circuit in the above entitled cause be and the same is hereby extended to and including January 25, 1937.

Dated this 16th day of October, 1936.

CHARLES N. PRAY,
United States District Judge.

[Endorsed]: Entered October 16, 1936. [231]

CLERK'S CERTIFICATE TO TRANSCRIPT
OF RECORD.

United States of America,
District of Montana.—ss.

I, C. R. Garlow, Clerk of the United States District Court for the District of Montana, do hereby certify and return to the Honorable, the United States Circuit Court of Appeals for the Ninth Circuit, that the foregoing volume consisting of 232 pages, numbered consecutively from 1 to 232 inclusive, is a full, true and correct transcript of the record and proceedings in case Number 669, Theodore Thompson vs. United States, required to be incorporated therein by praecipe filed, except the Summons, none having been issued in said cause, and except the Defendant's Requested Instruction No. 1, which appears at page 195 herein, in the Bill of Exceptions; I further certify that I have annexed to said transcript and included within said pages the original Citation issued in said cause.

I further certify that the costs of said transcript amount to the sum of \$37.50 and have been made a charge against the United States.

Witness my hand and the seal of said Court at Great Falls, Montana, this 6th day of November, A. D. 1936.

[Seal]

C. R. GARLOW,

Clerk.

By H. H. WALKER,

Deputy. [232]

[Endorsed]: No. 8373. United States Circuit Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. Theodore Thompson, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the District of Montana.

Filed November 9, 1936.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.